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 2178

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Laurent

SUBJECT: Non-Ad Valorem Assessments

DATE: February 26, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.			FT	
3.				
4.				
5.				
6.				

I. Summary:

This CS creates a new section of law to allow certain rural counties to levy a special assessment to fund Emergency Medical Services (EMS).

This bill creates section 125.271 of the Florida Statutes.

II. Present Situation:

Constitutional Preemption of Forms of Taxation to the State
Under the Florida Constitution, all taxes other than ad valorem taxes are preempted to the state except as authorized by general law.

Article VII, section 1(a), Florida Constitution, provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

Article VII, section 9(a), Florida Constitution, provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

All local government revenue sources are not taxes that require general law authorization. Valid special assessments and fees are home-rule revenue sources that do not require general law authorization. However, if a county or municipal ordinance enacting a special assessment or fee does not meet the legal sufficiency test for a valid special assessment or fee, it is considered a tax requiring general law authorization. [Collier County v. State, 773 So. 2d 1012 (Fla. 1999)]

Special Assessments (Background)
Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

The courts have defined the differences between a special assessment and a tax. Taxes are levied for the general benefit of residents and property rather than for a specific benefit to property. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax. [See City of Boca Rotan v. State, 595 So. 2d 25 (FLA. 1992)

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use and physical characteristics of the parcel.

Another important distinction in relevant descriptions of local government revenues is between special assessments and user or service charges. While special assessments and service charges are similar in many respects, a key difference is that a special assessment is an enforceable levy while a service charge or fee is voluntary.

A special assessment may provide funding for capital expenditures or the operational costs of services provided that the property, which is subject to the assessment, derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, storm-water management services, and water and sewer line extensions.

Eligibility Requirements
The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments; for counties, section 125.01, F.S., and for municipalities, Chapter 170, F.S. Special districts must derive their authority to levy special assessments through general law or special act.

County governments are authorized, pursuant to s. 125.01(1), F.S., to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county for the purpose of providing a number of municipal-type services. Such services can be funded, in whole or in part, from special assessments. The boundaries of the taxing or benefit unit may include all or part of the boundaries of a municipality subject to the consent by ordinance of the governing body of the affected municipality. Counties may also levy special assessments for county purposes.

Pursuant to s. 125.01(5), F.S., county governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the governing bodies of the affected municipalities. Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

Municipalities also have the authority, pursuant to chapter 170, F.S., to make local municipal improvements and provide for the payment of all or any part of the costs of such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement must be so declared by resolution.

Authorized Uses

Section 125.01(1)(q), F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by county governments, via the municipal service taxing or benefit units. These may include fire protection, law enforcement, beach erosion control, recreation service and facilities, water, alternative water supplies, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services and other essential facilities and municipal services.

Section 170.01, F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by municipal governments. In addition, s. 171.201, F.S., authorizes the governing body of a municipality to 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. Under the section, the governing body of a municipality is authorized to apportion costs of such special assessments based 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.

Litigation

In a recent case [*SMM Properties, Inc. v. City of North Lauderdale*, 760 So.2d 998 (Fla. 4th DCA 2000)], the Fourth District Court of Appeals considered the validity of a municipal special assessment used to fund the cost of an integrated fire rescue EMS program. Following the trial court's summary judgment on behalf of the city finding that the special assessment conferred a

special benefit to property, property owners appealed arguing that the assessment for emergency medical services is an invalid ad valorem tax clothed as a special assessment. The court held that it could separately analyze each of the services funded within the integrated fire services budget to insure that each component survived the required special benefits test for valid special assessments. The court found that emergency medical services provided by the city did not confer a special benefit on property, and thus the assessment for those services was an invalid ad valorem tax clothed as a special assessment.

Regarding s. 170.201, F.S., the court rejected the city's argument that this statute requires that the assessment in the case be validated. Viewing the statutory section as being designed to offer guidance to municipalities in the exercise of their authority to levy and collect assessments "against property benefited," the court noted that it read the provisions of chapter 170, F.S., as a whole as applying only to services which benefit the burdened property. The court concluded that s. 170.201, F.S., may not be properly applied to salvage the assessment for EMS services in this case because without a showing of special benefit to property, the assessment amounts to an improper tax.

Administrative Procedures

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 to 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.

Litigation

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 storm-water 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.

III. Effect of Proposed Changes:

Section 1 creates s. 125.271, F.S., a new section of law that allows certain counties to levy a special assessment to fund Emergency Medical Services (EMS). Eligible counties include:

- counties within a rural area of critical economic concern, as designated by the Governor;
- a county with a population of 75,000 or less on the effective date of this act that has levied at least 10 mills of ad valorem tax for the previous fiscal year; or

- a county which had adopted an ordinance authorizing the imposition of an assessment for EMS prior to January 1, 2002.

Once qualified, a county remains qualified to levy this special assessment for EMS.

The CS includes language providing that the authorization provided in this new section "shall be construed to be general law authorization pursuant to ss. 1 and 9 of Art. VII, of the State Constitution" -- a tax authorized by general law.

Special assessments for EMS levied by a county prior to the effective date of the act "are ratified and validated in all respects if they would have been valid had this section been in effect at the time they were levied." However, this legislation will not validate assessments in counties with litigation challenging the validity of an assessment pending on January 1, 2002.

Section 2 provides that the act will take effect upon becoming a law.

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 CS creates a new section of law to allow counties within a rural area of critical economic concern, or a county with a population of 75,000 or less on the effective date of this act that has levied at least 10 mills of ad valorem tax for the previous fiscal year, to levy a special assessment to fund EMS.

Currently, there are 14 counties located in areas designated by the Governor as rural areas of critical economic concern, to include: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty and Washington counties (pursuant to Executive Order # 99-275); and DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties (pursuant to Executive Order # 01-26).

In FY 2000, the following counties were at the statutory 10-mill ad valorem tax cap: Bay, Bradford, Calhoun, Dixie, Glades, Gilchrist, Gadsden, Jefferson, Lafayette, Madison, and Union.

B. Private Sector Impact:

This CS provides new statutory authority for certain counties to levy special assessments for EMS. As a result, property owners may be required to pay such special assessments.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The 2001 Legislature passed SB 1020, which includes some provisions similar to those included in CS/SB 2178. The Governor vetoed the bill. The following is taken from the Governor's veto message:

> Senate Bill 1020 significantly broadens the taxing authority of counties and cities by transforming a statute relating to special assessments into a statute that gives general law authorization for taxes. While the fiscal impacts of such a change are uncertain, Senate Bill 1020 would clearly expand the ability of counties and cities to generate tax revenues beyond current constitutional limitations for property taxes. This specific language was added to the bill on the Senate floor without going through a committee and without public debate raising concerns over the awareness of the implications of this change. While I remain sensitive to the financial needs of rural counties, this legislation is not narrowly crafted to address those needs. It should also be noted that even in the absence of this legislation, rural counties still have other revenue-raising methods, such as municipal service taxing units, available to them to help address these needs.

Although CS/SB 2178 includes some provisions similar to those included in SB 1020, there is one important difference. CS/SB 2178 includes a more limited authorization -- a special assessment authorization for a county that is located in a rural area of critical economic concern, is a rural county at the statutory 10-mill ad valorem tax cap, or has previously levied an assessment.

VIII. Amendments:

None.