

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 1024

SPONSOR: Comprehensive Planning Committee and Senator Atwater

SUBJECT: Non-Ad Valorem Assessments

DATE: March 12, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS expands the date range for holding a public hearing to adopt a non-ad valorem assessment roll, and authorizes an alternative notice process for certain changes to non-ad valorem assessments.

This bill amends section 197.3632, 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 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.

In 1999, the 4th DCA ruled that the City of Port St. Lucie failed to comply with the notice and public hearing 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.

Notice of the Proposed Property Taxes

Chapter 200, F.S., governs the method of fixing millage by local taxing authorities (TRIM process). Section 200.065, F.S., provides for the method of fixing millage and for the notice of the proposed property taxes to property owners. Taxing authorities must comply with all aspects of the notice requirements or be required to repeat the hearing and notice process. Section 200.069, F.S., requires the county property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction, to prepare and deliver by first-class mail to each taxpayer listed on the current year's assessment roll a notice of proposed property taxes.

III. Effect of Proposed Changes:

Section 1 amends s. 197.3632(4)(a), F.S., to expand the date range for holding a public hearing to adopt a non-ad valorem assessment roll. Current law provides that such hearing be held between June 1 and September 15. This CS requires the hearing to be held between January 1 and September 15.

Subsection (6) is amended to allow local governments an alternative notice process for changes in a non-ad valorem assessment - changes other than: an initial assessment; an assessment beyond the authorized maximum rate; changes in the district boundary; or changes in the purpose of the assessment (as specified in s. 197.3632(4)(a), F.S.) In these unspecified circumstances, the notice "may be provided by including the assessment in a property appraiser's notice of proposed property taxes and proposed or adopted non-ad valorem assessments," or the TRIM notice under s. 200.069, F.S. As such changes are currently noticed pursuant to s. 200.069, F.S., local governments levying special assessments will not incur additional costs. Local governments will still be required to have the hearing under paragraphs (4)(a) and (c).

Section 2 provides that the CS 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 amends provisions relating to the hearing and notice requirements for non-ad valorem assessments.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local governments using the optional notice procedures provided in this CS may spend less in noticing changes to non-ad valorem assessments they levy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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