

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1432

INTRODUCER: Senator Fasano

SUBJECT: County Government Funding

DATE: March 29, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill provides circumstances under which the board of county commissioners of an eligible county may use certain revenues for a purpose other than that specified by law. The bill defines the term “eligible county” and provides that county eligibility must be determined annually and may only be exercised one fiscal year at a time.

The authority granted under this bill does not apply to revenues that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

This bill creates section 125.595 of the Florida Statutes.

**II. Present Situation:**

Local government revenues stem from three major sources:

- Revenues authorized by the Florida Constitution,
- Revenues based on a local government’s Home Rule Authority, and
- Revenues authorized by the Legislature.

**Revenues Authorized by the Florida Constitution**

Article, VII, section 9 of the Florida Constitution, provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes.

- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage rate fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by the voters for special districts.
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).<sup>1</sup>

The Florida Constitution provides two exceptions to the millage caps: one for taxes levied for the payment of bonds and the other for taxes levied for a period not longer than two years when authorized by vote of the electors who are owners of freeholds therein.<sup>2</sup>

**County Millages**<sup>3</sup>— County government millages are composed of four categories of millage rates:

1. County general millage is the non-voted millage rate set by the county's governing body.
2. County debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.
3. County voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
4. County dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the county's millage to which the district is dependent.

As provided in Article VII, section 9 of the Florida Constitution, a county furnishing municipal services is authorized to levy additional taxes within the limits fixed by general law for municipal purposes through the establishment of a municipal service taxing unit (MSTU).<sup>4</sup> “The creation of the MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services.”<sup>5</sup> Section 200.071(3), F.S., provides that ad valorem taxes levied within such taxing units may be levied up to 10 mills.

**Municipal Millages**<sup>6</sup>— Municipal government millages are composed of four categories of millage rates:

1. Municipal general millage is the non-voted millage rate set by the municipality's governing body.

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<sup>1</sup> FLA. CONST. art. VII, s. 9.

<sup>2</sup> *Id.*

<sup>3</sup> The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 4 (Oct. 2010) (on file with Senate Committee on Community Affairs) *referencing* s. 200.001(1), F.S.

<sup>4</sup> *Id.* at 4. In determining the difference between an MSTU and a MSBU: an MSTU is used to fund county services derived through taxes whereas an MSBU is used to provide county services funded through service charges or special assessments.

<sup>5</sup> *Id.*

<sup>6</sup> *See* Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 5.

2. Municipal debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.
3. Municipal voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
4. Municipal dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., and added to the municipal millage to which the district is dependent and included as municipal millage for the purpose of the ten-mill cap.

The statutory authority for school districts and independent special districts to assess millage is provided in subsections (3) and (4) of s. 200.001, F.S. The statutory authority and the maximum rate at which water management districts may assess millage are provided in s. 373.503, F.S.<sup>7</sup>

### **Revenues Based on Home Rule Authority**

Local governments are granted broad home rule powers under the Florida Constitution.<sup>8</sup> Article VIII, section 1(g), of the Florida Constitution, grants charter counties all powers of local self-government not inconsistent with general law. Similarly, Article VIII, section 2(b) of the Florida Constitution, grants municipalities governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The term "municipal purpose" has been defined very broadly by Florida Courts.<sup>9</sup>

Local government revenues based on home rule authority are typically generated through proprietary fees, regulatory fees, and special assessments.

**Proprietary Fees**— Proprietary fees are fees that are charged in exchange for a particular government service. Proprietary fees are based on the assertion that the local government has the exclusive legal right to impose such fees.<sup>10</sup> Examples of propriety fees include utility fees, user fees, franchise fees, and admissions fees. The imposed fee must be reasonably related to the government-provided privilege or service.

**Regulatory Fees**<sup>11</sup>—Regulatory fees are fees that are imposed pursuant to a local government's police powers. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Regulatory fees must meet two elements to be valid: the fee must not exceed the regulated activity's cost and shall generally solely apply to the regulated activity's cost for which the fee is imposed.

<sup>7</sup> See ss. 200.001 and 373.503, F.S., for more information.

<sup>8</sup> See also chapters 125 and 166, F.S.

<sup>9</sup> See *Fla. Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005) (stating that the broad construction of municipal powers remains in force under Article VIII, section 2(b)); See also *City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983) (providing funding for a day care is a valid municipal purpose); See also *McLeod v. Orange County*, 645 So. 2d 411 (Fla. 1994) (charter county's ordinance imposing municipal utility tax is for a valid municipal purpose).

<sup>10</sup> Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 11.

<sup>11</sup> The following information was obtained from the Florida Legislature's Office of Economic and Demographic Research. See Florida Legislature's Office of Economic and Demographic Research, *supra* note 3, at 13.

**Special Assessments**<sup>12</sup>—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. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.<sup>13</sup> Counties and municipalities have the authority to levy special assessments based on their home rule powers. 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 assessment must directly benefit the property, and
- 2) The assessment must be apportioned fairly and reasonably amongst the beneficiaries of the service.<sup>14</sup>

These special assessments are generally collected on the annual ad valorem tax bills and characterized as a “non-ad valorem assessment” under the statutory procedures in ch. 197, F.S.<sup>15</sup> 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 s. 4, Art. X of the State Constitution.”<sup>16</sup>

### **Revenues Authorized by the Legislature**<sup>17</sup>

Local governments also have revenue sources that have been authorized by the Legislature. The Office of Economic and Demographic Research divides these revenue sources into two categories: 1) state-imposed fees or taxes shared with local governments or school districts, or 2) other local revenue sources.

**State-Shared Revenues**—Generally, state revenue programs allocate all or some portion of a state-collected fee or tax to specified local governments based on eligibility requirements. In some cases, a formula is developed for the allocation of funds between units of local government. While general law restricts the use of several shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments. The following revenues are included in the category of state-shared revenues:

- Alcoholic Beverage License Tax

<sup>12</sup> The following information was obtained from The Florida Legislature’s Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Oct. 2010) (on file with Senate Committee on Community Affairs).

<sup>13</sup> See *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

<sup>14</sup> *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

<sup>15</sup> *Primer on Home Rule & Local Government Revenue Sources* at 35 (June 2008).

<sup>16</sup> 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 . . . .”

<sup>17</sup> The following information was obtained from the Florida Legislature’s Office of Economic and Demographic Research, See Florida Legislature’s Office of Economic and Demographic Research, *supra* note 3, at 17-19.

- Constitutional Fuel Tax
- County Fuel Tax
- County & Municipal Revenue Sharing Programs
- Distribution of Sales and Use Taxes to Counties
- Emergency Management Assistance
- Enhanced 911 Fee
- Fuel Tax Refunds and Credits
- Insurance License Tax
- Intergovernmental Radio Communication Program
- Local Government Half-cent Sales Tax Program
- Miami-Dade County Lake Belt Mitigation Fee
- Miami-Dade County Lake Belt Water Treatment Plant Fee
- Mobile Home License Tax
- Oil, Gas, and Sulfur Production Tax
- Phosphate Rock Severance Tax
- State Housing Initiatives Partnership Program
- Support for School Capital Outlay Purposes
- Vessel Registration Fee<sup>18</sup>

***Other Local Revenue Sources***— The Legislature has also authorized a number of other local revenue sources. In many instances, in order to levy the fee, tax, or surcharge, the local government must enact an ordinance providing for its levy and collection. However, in some cases, referendum approval is required. For a number of revenue sources included in this category, general law restricts the expenditure use of the generated funds. The following revenues are included in the category of other local revenue sources:

- Communication Services Tax
- Convention Development Taxes
- Discretionary Surtax on Documents
- Green Utility Fee
- Gross Receipts Tax on Commercial Hazardous Waste Facilities
- Insurance Premium Tax
- Local Business Tax
- Local Discretionary Sales Surtaxes
- Local Option Food and Beverage Taxes
- Motor Fuel and Diesel Fuel Taxes (Ninth-Cent and Local Options)
- Municipal Pari-mutuel Tax
- Municipal Parking Facility Space Surcharges
- Municipal Resort Tax
- Public Service Tax
- Tourist Development Taxes
- Tourist Impact Tax<sup>19</sup>

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<sup>18</sup> *Id.* at 17-18.

<sup>19</sup> *Id.* at 18-19.

### III. Effect of Proposed Changes:

This bill creates s. 125.595, F.S., to allow the board of county commissioners of an eligible county, by a two-thirds vote of the membership of the board, to use state tax revenues that have been distributed to their county, or tax revenues that the Legislature has authorized their county to impose, for purposes other than the uses specified in the law providing for the distribution or the authorization to impose taxes.

The bill defines the term “eligible county” to mean a county that meets three of the following criteria, as determined by the Office of Economic and Demographic Research:

- The just value of property subject to ad valorem tax as of January 1 was lower than it was on the previous January 1.
- The annual per capita personal income of the county for the most recent calendar year was lower than for the prior calendar year.
- State sales tax remitted from within the county during the most recent calendar year was less than during the prior calendar year.
- The unemployment rate in the county in the previous calendar year was greater than 8 percent.
- The county was included in a major federal disaster or emergency declaration in the previous calendar year.<sup>20</sup>

The determination that a county is an “eligible county” must be made each year by the Office of Economic and Demographic Research, and the authority granted under this section may only be exercised for one fiscal year at a time.

The authority granted under this section does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

This bill shall take effect upon becoming law.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>20</sup>See Government Sector Impact below, for the Office of Economic and Demographic Research current estimate on the number of counties in the State that would classify as “eligible counties” under the provisions of this bill, based on current financial records.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Eligible counties, as determined in the bill, may use certain revenues for purposes other than that specified by law, subject to the approval by a two-thirds vote of the board of county commissioners.

The authority granted under this section does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill would allow the board of county commissioners of an “eligible county”, as determined each year by the Office of Economic and Demographic Research, to use certain revenues for a purpose other than that specified by law.

Each year, the Office of Economic and Demographic Research will be responsible for determining whether a county is an eligible county, pursuant to criteria provided in the bill. Based on current financial records, the Office of Economic and Demographic Research has determined that 38 of the 67 counties in the state would classify as “eligible counties” under the provisions of this bill.<sup>21</sup>

**VI. Technical Deficiencies:**

The Office of Economic and Demographic Research (EDR) has addressed the following two concerns with SB 1432:

- Page 1, line 24, states “... means a county that meets three of the following criteria, . . .”
  - They suggest that this line should read “... means a county that meets three or more of the following criteria, as ...”, in order to conform with the intent of the bill.
- Page 2, lines 38-40, states “(3) The determination that a county is an eligible county must be made each year, and the authority granted under this section may be exercised only one fiscal year at a time.”
  - They suggest that this language be modified to include a deadline for the EDR’s annual determination of county eligibility, which is several months prior to the October 1 start of the county government fiscal year, and the language should include a mechanism for the EDR’s reporting of this annual determination. For

<sup>21</sup>Email from Steve O’Cain, Senior Legislative Analyst, Office of Economic and Demographic Research (EDR), to Dana Gizzi, Legislative Analyst, Senate Committee on Community Affairs (March 30, 2011) (on file with the Senate Committee on Community Affairs) (noting that the number of eligible counties per this criterion and in total is subject to change since the 2009 per capita personal income data by county will be released by the U.S. Department of Commerce’s Bureau of Economic Analysis in late April).

example, page 2, lines 38-40 could read “(3) The determination that a county is an eligible county must be made no later than July 1 of each year, and the annual determination of county eligibility must be posted on the Office of Economic and Demographic Research’s website. The authority granted under this section may be exercised only one fiscal year at a time.”<sup>22</sup>

## VII. Related Issues:

The bill states that the authority granted herein does not apply to revenue that may be used only for a purpose specified in the Florida Constitution or to revenues from taxes levied with the approval of the voters; however, the bill does not specify which types of revenues the authority *does* apply to, which indicates that it applies to all local government revenues.

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

### B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>22</sup> *Id.*