

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 320

SPONSOR: Senator Klein

SUBJECT: Ad Valorem Taxation

DATE: February 16, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill would allow cities, counties, and school districts to levy an interim improvement surcharge on improvements to real property within their respective jurisdictions.

This bill creates the following sections of the Florida Statutes: s. 192.205.

II. Present Situation:

Article VII, Section 9 of the State Constitution, authorizes counties, school districts, municipalities, pursuant to general law, to levy ad valorem taxes for their respective purposes. Article VII, Section 4(c) of the State Constitution requires that the assessment of Homestead property be changed annually on January 1 of each year. Section 192.042, F.S., requires real property which is substantially complete and tangible personal property which is substantially complete or acquired to be assessed for ad valorem tax purposes on January 1 of each year. Property substantially complete or acquired after January 1 is not placed on the property tax rolls until January 1 of the subsequent year. There is no provision in general law to assess property on a date other than January 1.

Section 192.042, F.S., declares that “substantially complete” means that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

Article VII, Section 12 of the State Constitution requires local governments to obtain voter approval when pledging ad valorem tax revenues against bonds, certificates of indebtedness, or any form of tax anticipation certificates maturing more than twelve months after issuance.

Section 197.3632, F.S., establishes the uniform method of levy, collection, and enforcement of non-ad valorem assessments. Subsection (5) requires the local government levying the assessment to certify a non-ad valorem assessment roll to the tax collector by September 15 of each year. This roll must list the assessment for each parcel on the roll and must be on an electronic medium

compatible with the system used by the tax collector's office. Subsection (2) requires the local government to enter into a written agreement with the property appraiser and tax collector to provide for "reimbursement of necessary administrative costs incurred under this section."

It is estimated that 16 cities currently levy an "interim proprietary services fee" on new construction. This fee is designed to fund a local government's service or operational expenses resulting from new development. The authority to levy fees stems from home rule powers reserved for counties and cities by the State Constitution. In contrast, taxes must be authorized by general law.

The City of Oakland Park's interim proprietary services fee ordinance was ruled invalid because the court found the fee was actually an unauthorized tax. *City of Oakland Park v. Oakland Forest Corporation Center*, 515 So.2d 1055 (Fla. 4th DCA 1987). While the Oakland Park fees were based on the value of new construction, research indicates that sixteen cities that currently levy the fee have rate structures based on set amounts per unit or per square foot, pro rated monthly.

In March 1998, Collier County adopted an ordinance imposing an Interim Government Services fee on recently improved property, pledging the fee revenues against a bond for capital improvements. The imposition of the fee was challenged in court and the trial judge denied the county's request for validation on the grounds that the fee funded general government services, and therefore did not meet the standard for special assessments. (*Collier County v. State*, Case No. 98-1703-CA) The case was appealed by Collier County and the Florida Supreme Court will hear oral arguments on the case March 5, 1999.

III. Effect of Proposed Changes:

Section 1 provides that counties, school districts and municipalities may, within their respective jurisdictions, levy an interim improvement surcharge on improvements to real property which were not substantially completed before January 1 of the preceding year but which were substantially completed, as defined in s. 192.042, F.S., before January 1 of the current year.

The surcharge is computed by multiplying the taxable value of the improvement by the ad valorem millage rate levied by the county, school district, or municipality, as appropriate, in the previous year and by a time factor. The time factor is a fraction of which the numerator equals the number of days of the year during which the improvement was substantially completed and the denominator is the number of days in that year. The amount of the surcharge may be limited by ordinance.

Notice of imposition of the surcharge must be made by first class mail by the governing body levying the surcharge. The governing body must also annually prepare a surcharge assessment roll in accordance with the procedures specified for non-ad valorem assessment rolls in s. 197.3632(5), F.S. The surcharge must be included in the TRIM notice in the year after the year the improvement becomes substantially complete. Surcharge early payments, prepayments, deferred payments, delinquent payments, and issuance and sale of tax certificates and tax deeds for nonpayments are subject to the collection provisions of chapter 197, F.S.

Surcharge proceeds may be used for "any public purpose" and may be pledged against bonds.

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.

D. Other Constitutional Issues:

This bill creates an “interim improvement surcharge,” a new general revenue source for local governments. The surcharge would be imposed by levying a millage rate against the value of an improvement to real property. This is the same means by which ad valorem taxes are levied.

If it is determined that this surcharge is an ad valorem tax, it is vulnerable to the same constitutional challenges confronted by Partial-Year assessments, which has been presented to the Legislature in various forms over the past decade. The constitutional challenges include issues related to the taxation of tangible personal property, authorizing partial year assessments as a local option, compatibility of the “Save Our Homes” constitutional provision, administration of tax liens, the basis for determining if property is substantially complete, and the application of exemptions. [See *REPORT-IN-BRIEF -- Ad Valorem Partial Year Assessments: Relevant Issues and Information*, January, 1995, by the Advisory Council on Intergovernmental Relations.] In addition, bonding of ad valorem tax revenue for more than one year is subject to voter approval, pursuant to Article VII, Section 12 of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill would authorize counties, school districts, and municipalities to levy an interim improvement surcharge against real property substantially completed in the previous year. It is estimated that a partial-year assessment on new construction for FY 2000/1 by all taxing authorities would generate \$130 million statewide. If no fee limit is imposed, counties and school districts would generate an estimated \$ 51.15m and \$61.69m respectively in FY 2000/1 from the interim improvement surcharge. Potential revenues for cities would be less than \$17m in FY 2000/1.

B. Private Sector Impact:

Property owners whose property is substantially completed after January 1 of any year would be assessed a surcharge for those months that the property was substantially complete, whereas under current law that property would not be taxed.

C. Government Sector Impact:

Local governments levying the surcharge, and their respective county tax collectors and property appraisers, will incur administrative costs to implement the surcharge. The bill requires the local government levying the surcharge to prepare the assessment roll. The bill does not specifically require the property appraiser or tax collector to participate in the necessary data or revenue collection process. Subsection 197.3632(2), F.S., requires the local governing board to enter into written agreements the county property appraiser and tax collector “for reimbursement of necessary administrative costs incurred under this section.” However, it does not require the property appraiser or tax collector to enter into the agreement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.