



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill does not reduce the current levels of government at the local level, but may limit future growth in government by requiring a supermajority vote to increase taxes, special assessments, and impact fees in the future.

Ensure lower taxes – This bill does not directly reduce or increase taxes, special assessments, or impact fees currently paid by private parties; however, by requiring approval by a super majority of the governing body and approval by 3/5 of the electors voting in a referendum if a referendum is otherwise required by law, this bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees in the future.

#### B. EFFECT OF PROPOSED CHANGES:

##### I. EFFECT OF PROPOSED CHANGES

Beginning July 1, 2007, and notwithstanding any other general or special law, the governing board of a county, municipality, school board, or special district may not take the following actions unless the action is first approved by at least a 3/5 vote, or a majority plus one, whichever is greater, of the governing board's membership:

- Levy a new tax, special assessment, non-ad valorem assessment, or impact fee;
- Increase an existing tax, special assessment, non-ad valorem assessment, or impact fee;
- Expand a tax base or a geographic area subject to a tax, special assessment, non-ad valorem assessment, or impact fee; or
- Eliminate an exemption from a tax, special assessment, non-ad valorem assessment, or impact fee.

If the governing board of a county, municipality, school board, or special district takes action by supermajority vote, and the law otherwise requires approval by the electors voting in a referendum, the action must be approved by at least a 3/5 vote of electors voting in the referendum.

This bill does not:

- Apply to ad valorem taxes, fees other than impact fees, license fees, penalties, fines, or charges for services;
- Impose a cap on the amount of future revenues that may be raised from non-ad valorem taxes, special assessments, and impact fees;
- Reduce current local government revenues; or
- Apply to a tax, special assessment, non-ad valorem assessment, or impact fee levied or increased for the exclusive purpose of funding repair or replacement of public infrastructure damaged in a natural or man-made disaster that resulted in a declaration of emergency by the Governor.

The term "non-ad valorem assessment" is given the same meaning as provided in s. 197.3632, F.S., which defines "non-ad valorem assessment" as "only those assessments which 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."

## II. BACKGROUND

This section will provide a brief description of the sources of revenue affected by this bill, and the authority of counties, municipalities, special districts, and school districts to utilize those revenue sources. This bill does not affect ad valorem taxes, which will not be discussed below.

### A. Taxes

A tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform.<sup>1</sup> Examples of taxes that may be imposed by local governments pursuant to Legislative authority include tourist development taxes, local discretionary sales taxes, voter-approved indigent care surtax, and local option food and beverage taxes.

Pursuant to the Florida Constitution, taxes may not be levied by a county, municipality, special district, or school district unless specific statutory authorization is provided by the Legislature.<sup>2</sup> The Legislature may not create a special taxing district with general taxing authority; rather, a special district may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.<sup>3</sup>

The Legislature has authorized certain counties or cities to levy the following taxes, subject to statutory restrictions regarding the manner in which the taxes are imposed, the use of tax proceeds, and the amount of taxes that may be levied:

- Tourism-Related Local Option Taxes, including:
  - Municipal Resort Tax; Tourist Development Taxes; 1 or 2 Percent Tax on transient rental transactions; Additional 1 Percent Tax on transient rental transactions; Professional Sports Franchise Facility Tax; Additional Professional Sports Franchise Facility Tax; Tourist Impact Tax within Areas of Critical State Concern; Convention Development Taxes; Consolidated County Convention Development Tax; Charter County Convention Development Tax
- Local Option Fuel Taxes (up to 12 cents per county composed of three separate taxes):
  - Ninth-Cent Fuel Tax; 1 to 6 Cents Local Option Fuel Tax; 1 to 5 Cents Local Option Fuel Tax
- Local Option Discretionary Sales Surtaxes, including:
  - Charter County Transit System Surtax; Local Government Infrastructure Surtax; Small County Surtax; Indigent Care and Trauma Center Surtax; County Public Hospital Surtax; School Capital Outlay Surtax; Voter-Approved Indigent Care Surtax
- Local Option Food and Beverage Taxes
- Discretionary Surtax on Documents
- Insurance Premium Tax
- Municipal Pari-Mutual Tax
- Public Service Tax<sup>4</sup>

Some of these taxes may be levied by a majority vote of the governing board wishing to impose the tax, some taxes may be levied by ordinance adopted by an extraordinary vote of the governing body of the county or municipality levying the tax, and other taxes also must be approved by a majority vote of the affected electors voting in a referendum.

<sup>1</sup> City of Boca Raton v. State, 595 So.2d 25 (Fla.1992).

<sup>2</sup> Art. VII, § 9(a), Fla. Const.; Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999).

<sup>3</sup> State ex rel. City of Gainesville v. St. Johns River Water Management Dist., 408 So. 2d 1067 (Fla. 1<sup>st</sup> DCA 1982).

<sup>4</sup> See the 2006 Local Government Financial Information Handbook for a complete discussion of each tax, available at <http://www.floridalcir.gov/reports/lgfi06.pdf>.

## B. SPECIAL ASSESSMENTS and NON-AD VALOREM ASSESSMENTS

Special assessments are generally collected as part of a property owner's annual ad valorem tax bill using the uniform collection procedure provided in s. 197.3632, F.S. If a special assessment is collected using the uniform procedure, the special assessment is characterized as a "non-ad valorem assessment".<sup>5</sup> The sole difference between a "special assessment" and a "non-ad valorem assessment" is the manner in which the assessments are collected. Therefore, for purposes of this analysis, the term "special assessment" refers to non-ad valorem assessments as well as special assessments that are not collected using the uniform procedure.

In 1992, the Florida Supreme Court explained that, although special assessments and taxes are both mandatory, a special assessment is distinct from a tax.<sup>6</sup> Taxes are levied throughout a particular taxing unit for the general benefit of residents and property and are imposed under the theory that contributions must be made by the community at large to support the various functions of the government. Consequently, many citizens may pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments must confer a specific benefit on the land burdened by the assessment and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or service for which the assessment is levied.<sup>7</sup>

As established in Florida case law, two requirements exist for the imposition of a valid special assessment.<sup>8</sup> 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.<sup>9</sup> In order for property to derive a special benefit, there must be a "logical relationship' between the services provided and the benefit to the real property".<sup>10</sup>

A special assessment may provide funding for capital expenditures or the operational costs of services. Examples of services and improvements that may be funded by special assessments include:

- garbage collection and disposal
- fire protection
- street improvements
- landscaping
- erosion control
- parking facilities
- stormwater management services
- sewer improvements
- first response medical service
- mosquito control
- signage
- lighting
- downtown redevelopment
- water and sewer line extensions<sup>11</sup>

Services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property. Thus, such services may not be funded through special assessments.<sup>12</sup>

<sup>5</sup> S. 197.3632(1)(d), F.S.; Madison v. Foxx, 636 So.2d 39 (1st DCA 1994).

<sup>6</sup> Sarasota County v. Sarasota Church of Christ, Inc., 667 So.2d 180 (Fla.1995), citing City of Boca Raton v. State, 595 So.2d 25 (Fla.1992).

<sup>7</sup> Id. at 183.

<sup>8</sup> City of Boca Raton, 555 So.2d 25 (Fla. 1992).

<sup>9</sup> 2006 Local Government Financial Information Handbook, at 19.

<sup>10</sup> Lake County v. Water Oak Mgmt. Corp., 695 So.2d 667 (Fla. 1997).

<sup>11</sup> 2006 Local Government Financial Information Handbook, at 19.

<sup>12</sup> Lake County v. Water Oak Mgmt. Corp., 695 So.2d 667 (Fla. 1997).

The following table illustrates the aggregate amount of special assessment revenues reported by counties, municipalities, and special districts for the years 1993 and 2004<sup>13</sup>:

	<b>1993 Revenues</b>	<b>2004 Revenues</b>	<b>Percent Increase</b>
<b>Counties</b>	\$204,456,351	\$369,533,612	80.73%
<b>Municipalities</b>	24,932,058	166,936,249	569.56%
<b>Special Districts</b>	91,290,876	311,955,304	241.71%
<b>TOTAL</b>	320,679,285	848,425,165	164.57%

**County Authority:** A county has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature.<sup>14</sup> However, charter county authority to impose special assessments may be limited by general law enacted by the Legislature or special law approved by the voters, and non-charter county authority may be limited by general or special law enacted by the Legislature.<sup>15</sup> Section 125.01, F.S., authorizes the governing body of a county to levy and collect special assessments to the extent not inconsistent with general or special law.

**Municipal Authority:** A municipality has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature; however, that authority may be limited by general or special law enacted by the Legislature.<sup>16</sup>

**Special District Authority:** A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district's charter.<sup>17</sup> Therefore, independent special districts may levy special assessments only if authorized by the Legislature in general or special law, while dependent special districts may levy special assessments if authorized by the county or municipality that created the district.

### **C. IMPACT FEES**

An impact fee, which is considered a "regulatory fee," represents a total or partial reimbursement to local governments for the cost of additional facilities or services necessary as the result of new development. Rather than imposing the cost of these additional facilities or services upon the general public, impact fees shift the capital expense burden of growth from the general public to the developer and new residents.<sup>18</sup>

In Florida, impact fees are an outgrowth of local governments' home rule powers to provide certain services within their jurisdictions.<sup>19</sup> Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.<sup>20</sup>

In 1976, the Florida Supreme Court declared that an impact fee must meet the two-pronged "dual rational nexus test" in order to be a valid impact fee.<sup>21</sup> Under the dual rational nexus test, an entity

<sup>13</sup> Florida Legislative Committee on Intergovernmental Relations, based upon data reported by the entities to the Department of Financial Services.

<sup>14</sup> Art. VIII, §1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999).

<sup>15</sup> Art. VIII, §1(f), (g); Fla. Const.

<sup>16</sup> Art. VIII, § (2)(b), Fla. Const.; City of Boca Raton v. State, 595 So.2d 25, 30 (Fla. 1992).

<sup>17</sup> State ex rel. City of Gainesville v. St. Johns River Water Mgmt District, 408 So.2d 1067 (Fla. 1st DCA 1982).

<sup>18</sup> 2006 Local Government Financial Information Handbook, at 25-26.

<sup>19</sup> Art. VIII, §§1-2, Fla. Const.; Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

<sup>20</sup> *Id.* at 26.

<sup>21</sup> Florida Impact Fee Review Task Force, *Final Report & Recommendations*, Feb. 1, 2006, at 2; See, City of Dunedin at 320.

imposing an impact fee must establish that the impact fee has:

- 1) A reasonable connection, or a rational nexus, between the anticipated need for the additional capital facilities and the growth generated by the new development; and
- 2) A reasonable connection, or a rational nexus, between how the collected funds are going to be spent and the benefits received by the new development from those funds.<sup>22</sup>

Legally sufficient impact fees share common characteristics, including: (1) the fee is levied on new development or new expansion of existing development; (2) the fee is a one-time charge, although collection may be spread over time; (3) the fee is earmarked for capital outlay only, operating costs are excluded; and (4) the fee represents a proportional share of the cost of the facilities needed to serve the new development.<sup>23</sup>

In 2006, the Legislature created the Florida Impact Fee Act in s. 163.31801, F.S., finding “that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth” and that “impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.”<sup>24</sup> The Legislature, however, declared its intent that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at a minimum:

- 1) Require that the fee’s calculation be based on the most recent and localized data;
- 2) Provide for accounting and reporting of impact fee collections and expenditures via the use of separate accounting funds;
- 3) Limit administrative charges for the collection of impact fees to actual costs; and
- 4) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.<sup>25</sup>

Impact fees are the most significant of the regulatory fees in terms of their fiscal impact on counties, municipalities, and school districts.<sup>26</sup> In 1993, reported impact fee revenues in Florida totaled \$177 million. In 2004, reported impact fee revenues totaled \$1.07 billion statewide. This growth in impact fee revenues represents a 505 percent increase with much of the accelerated growth since the late 1990s. Cumulatively, from 1993 through 2004, reported impact fee revenues totaled nearly \$5.3 billion.<sup>27</sup>

**County Authority:** A county may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature.<sup>28</sup> However, charter county authority to impose impact fees may be limited by general law enacted by the Legislature or special law approved by the voters, and non-charter county authority may be limited by general or special law enacted by the Legislature.<sup>29</sup> School districts do not have independent authority to levy impact fees; therefore, county governments levy impact fees and share the proceeds with the school districts.

**Municipal Authority:** A municipality may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature; however, that authority may be limited by general or special law enacted by the Legislature.<sup>30</sup>

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<sup>22</sup> Id.

<sup>23</sup> 2006 Local Government Financial Information Handbook, at 26.

<sup>24</sup> Ch. 2006-218, L.O.F. (CS/SB 1194)

<sup>25</sup> S. 163.31801, F.S.; 2006 Local Government Financial Information Handbook, at 25.

<sup>26</sup> 2006 Local Government Financial Information Handbook, paragraph at 25-26.

<sup>27</sup> Florida Impact Fee Review Task Force, *Final Report & Recommendations*, Feb. 1, 2006, at 3.

<sup>28</sup> Art. VIII, §1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; City of Dunedin, 329 So.2d 314 (Fla. 1976).

<sup>29</sup> Art. VIII, §1(f), (g); Fla. Const.

<sup>30</sup> Art. VIII, § (2)(b), Fla. Const.; City of Dunedin, 329 So.2d 314 (Fla. 1976).

**Special District Authority:** A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district's charter.<sup>31</sup> Therefore, independent special districts may levy impact fees only if authorized by the Legislature in general or special law, while dependent special districts may levy impact fees if authorized by the county or municipality that created the district.

**D. REVENUE SOURCES THAT ARE NOT AFFECTED BY THIS BILL**

**1. Ad valorem property taxes:** This bill does not affect county, municipal, special district, or school district authority to levy ad valorem taxes.

**2. Proprietary and Regulatory Fees:** Counties and municipalities possess home rule authority to impose a variety of proprietary and regulatory fees to pay the cost of providing a service or facility or regulating an activity.

a. Proprietary fees are based on the assertion that local governments have the exclusive legal right to impose such fees. Fees of this type include franchise fees, user fees, and utility fees. Two principles guide the use and application of such fees. The imposed fee must be reasonable in relation to the privilege or service provided by the local government, or the fee payer must receive a special benefit from the local government.

b. Regulatory fees are imposed pursuant to the local government's police powers in the exercise of its sovereign functions. Examples of regulatory fees include building permit fees, inspection fees, and stormwater fees. Two principles guide the use and application of such fees. The imposed fee cannot exceed the cost of the regulatory activity, and proceeds from the fee must be used solely to pay the cost of the regulatory activity for which it is imposed.<sup>32</sup>

**C. SECTION DIRECTORY:**

Section 1 creates an unnumbered section of law requiring a super majority vote for actions by a local government to levy new, increase existing, expand a base or area subject to, or eliminate an exemption from taxes, special assessments, non-ad valorem assessments, or impact fees; requiring a super majority vote of electors voting in referenda on laws taking the same actions; providing an exception for certain emergencies; providing for nonapplication to certain other revenue sources; providing a definition of "non-ad valorem assessment."

Section 2 provides an effective date of July 1, 2007.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures: None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: This bill does not reduce the amount of current revenues by local government entities or cap the amount of future revenues that may be collected. See Fiscal Comments.

2. Expenditures: None.

<sup>31</sup> State ex rel. City of Gainesville v. St. Johns River Water Mgmt District, 408 So.2d 1067 (Fla. 1st DCA 1982).

<sup>32</sup> 2006 Local Government Financial Information Handbook, at 19.

- C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** This bill does not directly reduce or increase taxes, special assessments, or impact fees currently paid by private parties; however, the bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees by requiring approval by a super majority vote of the governing body and approval by 3/5 of the electors voting in a referendum if a referendum is otherwise required by law.
- D. **FISCAL COMMENTS:** This bill may make it more difficult for a county, municipality, special district, or school board to increase taxes, special assessments, and impact fees by requiring approval by a super majority vote of the governing body and approval by 3/5 of the electors voting in a referendum if a referendum is otherwise required by law.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

- 1. **Applicability of Municipality/County Mandates Provision:** This bill does not require a county or municipality to spend funds and does not reduce the percentage of a state tax shared with counties and municipalities. Therefore, Subsections 18 (a) and (c), Article VII, of the Florida Constitution do not apply.

Subsection 18(b), Article VII, of the Florida Constitution provides that the Legislature, except upon approval by a 2/3 vote, may not enact a general law if the anticipated effect of doing so would be to reduce county and municipal authority to raise revenues in the aggregate. This bill does not directly reduce taxes, special assessments, or impact fees currently levied by counties or municipalities; however, this bill requires approval by a super majority of a county or municipal governing body and approval by 3/5 of the electors voting in a referendum, if a referendum is otherwise required by law, to increase taxes, special assessments, and impact fees in the future.

It is unclear whether the requirement for a supermajority vote by a county or municipality represents a reduction of revenue-raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) was to determine whether the amount of potential revenue available to cities and counties was reduced, then this bill does not reduce that potential and the requirement for a 2/3 vote is not applicable. However, if subsection 18(b) encompasses Legislative changes in the methods used by cities and counties to raise revenues, then the provisions of this bill that require a supermajority vote to increase revenues may be considered a mandate requiring a 2/3 vote of the Legislature. There does not appear to be any legal authority to guide the Legislature in making a determination regarding whether the bill constitutes a mandate under subsection 18(b).

- 2. **Other:** None.

- B. **RULE-MAKING AUTHORITY:** This bill does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.
- D. **STATEMENT OF THE SPONSOR:** A statement of the sponsor was not submitted.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.