



VILLAGE OF BISCAYNE PARK
640 NE 114TH STREET
BISCAYNE PARK, FL 33161
TEL: 305 899 8000 FAX: 305 891 7241
www.biscayneparkfl.gov

Mayor and Commission

Roxanna Ross
Mayor

Albert Childress
Vice Mayor

Robert "Bob" Anderson
Commissioner

Steve Bernard
Commissioner

Bryan Cooper
Commissioner

Ana Garcia
Village Manager

John J. Hearn
Village Attorney

Maria Camara
Village Clerk

AGENDA
REVENUE WORKSHOP
Ed Burke Recreation Center - 11400 NE 9th Court
Biscayne Park, FL 33161
Saturday, April 17, 2010 - 10:00AM



Indicates documents are attached to this agenda. Additional documents will be provided at the workshop as handouts.

1 Call to Order

2 Roll Call

3 Public Comments

4 Additions, deletions and changes

5 Presentations

5.a Village Manager Ana Garcia & Senior Staff



- > Preliminary summary of non-budgeted future expenditures
- > Preliminary budgetary saving proposals
- > Preliminary revenue generating proposals

5.b Commissioner Bryan Cooper

- > Enterprise Funds
- > Creative Revenue Analysis

5.c Commissioner Steve Bernard



- > Current resident revenue information
- > Special assessments

5.d Mayor Roxanna Ross

6 Final Public Comments

7 Final Comments

7.a Commission:

- > Vice Mayor Al Childress
- > Commissioner Bob Anderson
- > Commissioner Steve Bernard
- > Commissioner Bryan Cooper
- > Mayor Roxanna Ross

8 Adjournment

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

DECORUM - Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.

Preliminary Summary of Non-Budgeted Expenditures

1. Increase for the renewal of Health Care benefits.

Proposal has been received showing a 26% cost increase to the Village for the health care benefits that are currently provided. The following page breaks down the costs. Additional quotes are pending to be received but are expected to be relatively the same. The current policy expires end of May 2010.

Anticipated increase for insurance premiums: **\$ 35,489.00**

2. Unemployment Compensation & Workmen's Comp

Expenditures that we cannot control.

	2007-08	2008-09	2009-10 (Thru 1st Qtr Only)	
Unemployment:	\$65	\$32,820	\$3,000	- Expected to increase with layoff of janitorial services.
Workmen's Comp*:	\$105,000	\$65,000	\$12,000	- Three police officers with open claims.
	\$105,065	\$97,820	\$15,000	

* The Workmen's Comp claims are open claims still pending during the period of time the Village was self-insured.

3. Public Works Building

\$8-\$10,000 over budget due to non-projected expenses.

4. Existing on-going litigation on Police related cases:

2009-10 Budget for outside council: \$30,000
 Actual expenses thru 2nd quarter: -\$40,000
 Projected expenses thru end of year: -\$20,000

-\$30,000 * This does NOT include possible additional amounts for:

- > Funds to cover cost of reinstatement
- > Overtime expenses to offset shift coverage
- > Settlements

5. Repairs to existing fire alarm in Village Hall.

Repairs are needed to the fire alarm before passing final inspection, or we will be fined by the county. This amount was not budgeted in 2009-10 as had been in the previous year. Total amount for repairs: **\$1,200.00**

Reduction in Ad-Valorem taxes due to projected decrease in property values:

Projected	Loss of Revenue
-10%	\$150,000
	OR
-15%	\$224,000

2009-10 Budget was adopted in the red: **\$23,800**

**Medical Insurance: AvMed
Current Plan through 5/31/2010:**

**POS 3705: \$20Dr/\$40Spec, \$750D,
90/60, \$15/\$30/\$50/\$75**

Monthly Premium:	\$13,749.84
Less Dep. Coverage Paid by Employee:	-\$2,324.42
Less Empl Contribution of \$30 per pay period*:	-\$1,105.00
Total Monthly Premium Paid by Biscayne Park:	\$10,320.42

Annual Total Premium Paid by Biscayne Park:	\$123,845.04
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**Medical Insurance: AvMed
Renewal Plan Effective 6/1/2010:**

**POS 3705: \$20Dr/\$40Spec,
\$750D, 90/60,
\$15/\$30/\$50/\$75**

Monthly Premium:	\$17,252.85
Less Dep. Coverage Paid by Employee:	-\$2,916.70
Less Empl Contribution of \$30 per pay period*:	-\$1,105.00
Total Monthly Premium Paid by Biscayne Park:	\$13,231.15

Annual Total Premium Paid by Biscayne Park:	\$158,773.80
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\$34,928.76
28.20%

**Dental Insurance: Principal
Current Plan through 5/31/2010:**

Monthly Premium:	\$1,008.95
Less Dep. Coverage Paid by Employee:	-\$217.54
Total Monthly Premium Paid by Biscayne Park:	\$791.41

Annual Total Premium Paid by Biscayne Park:	\$9,496.92
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Monthly Premium:	\$1,068.49
Less Dep. Coverage Paid by Employee:	-\$230.39
Total Monthly Premium Paid by Biscayne Park:	\$838.10

Annual Total Premium Paid by Biscayne Park:	\$10,057.20
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\$560.28
5.90%

**Life Insurance: Lincoln National Life
Current Plan through 5/31/2010:**

Monthly Premium:	\$392.65
Less Dep. Coverage Paid by Employee:	-\$130.15
Total Monthly Premium Paid by Biscayne Park:	\$262.50

Annual Total Premium Paid by Biscayne Park:	\$3,150.00
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Monthly Premium:	\$392.65
Less Dep. Coverage Paid by Employee:	-\$130.15
Total Monthly Premium Paid by Biscayne Park:	\$262.50

Annual Total Premium Paid by Biscayne Park:	\$3,150.00
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\$0.00
0.00%

GRAND ANNUAL TOTAL PAID BY BISCAYNE PARK:	\$136,491.96
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GRAND ANNUAL TOTAL PAID BY BISCAYNE PARK:	\$171,981.00
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\$35,489.04
26.00%

April 15, 2010

Preliminary Budgetary Savings Proposals

1. Changing election year to coincide with county-wide elections.

The charter provides for Commission seat elections to run stand-alone on odd numbered years. The following page breaks down the costs (does not include additional advertising expenses) for the election comparing the stand alone election to a piggy-back election.

Actual for Dec 2009 Election:	\$11,862
Estimated Nov 2010 Piggy Back:	\$2,761
	<u>\$9,101</u> Difference

Projected annual savings (election costs and advertising): \$5,000

2. Procurement of services and supplies

User Access Program (UAP) with Miami Dade County:

Utilizing established County contracts can provide significant savings through the purchase of goods and services. In addition to substantial savings in terms of value, and reduced administrative and personnel costs associated with the purchasing functions, as an MDC purchasing partner, we can share in revenue rebates for every dollar invoiced.

Will be meeting with the head of Miami Dade County Procurement on Friday, April 23rd to get all the details. Based on what is available, will compare to what has been purchased to date, as well as review all current contracts.

FedEx - Kinko - Florida State Pricing

25% reduced costs on printing services:

Business Cards

Newsletter

Signage

**ESTIMATES FOR BISCAVNE PARK
SUPERCENTER**

Scenarios	1	2	3	4	5	6	Totals
Registered Voter -1890 Supercenter	Stand Alone	Stand Alone- Run Off	Piggyback- Big 4-11/4/09	Run-Off with Miami	Piggyback- CW-08/2010	Piggyback- CW-11/2010	
Personnel Costs	\$ 5,245.09	\$ 4,674.97	\$ 4,586.12	\$ 3,685.58			\$ 18,191.76
Trucks & Vehicles	\$ 678.70	\$ 660.00	\$ 381.70	\$ 356.00			\$ 2,076.40
Polling Place Activation	\$ 175.00	\$ 175.00	\$ 175.00	\$ 175.00			\$ 700.00
Printing	\$ 1,228.00	\$ 1,228.00	\$ 1,228.00	\$ 1,228.00			\$ 323.12
Postage	\$ 87.48	\$ 82.32	\$ 72.00	\$ 81.32			\$ 15,060.00
Ballot Creation	\$ 2,510.00	\$ 2,510.00	\$ 2,510.00	\$ 2,510.00	\$ 2,510.00	\$ 2,510.00	\$ 36,351.28
Administrative Overhead	\$ 992.43	\$ 933.03	\$ 895.28	\$ 803.59	\$ 251.00	\$ 251.00	\$ 3,780.00
Post Election Audit Fee	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00			
Totals	\$ 11,861.70	\$ 11,208.32	\$ 10,793.10	\$ 9,784.49	\$ 2,761.00	\$ 2,761.00	\$ 40,131.28

Scenarios (5) & (6) If municipal questions/candidates require an additional page on the ballot, the price is .44 per page.
 Scenarios (1) (2) (3) (4) Estimates do not include Early Voting which is approximately \$2,000 per site, per day.

April 15, 2010

Preliminary Revenue Generating Proposals

1. Increasing the Electric Utility Service Tax

Residents are currently billed 8% on their electric bill.

The maximum we can bill is 10%.

This additional 2% would increase revenues by: \$24,000.00

2. Police related initiatives

To be provided in detail by Chief Mitch Glansberg

How to make up \$120,000

Electric Utility Service Tax

currently 8%
can go to 10% max
this increases revenue by \$ 24,000

Franchise Fee paid by City to FPL

As per adopted budget 2009-2010

Gen Government	\$	30,000
Public Works	\$	1,050
Recreation	\$	7,900
Road Fund	\$	900
Sanitation	\$	1,050
	\$	40,900
	x	5.99%
		\$ 2,450

Electric Conservation

Our electric bills are budgeted this year: 40900
If we conserve 5%, that is equal to \$ 2,045
If we conserve 10%, that is equal to \$ 4,090

Ad Valorum increase

2009-2010 Ad Valorum Revenue 1,424,144

Existing AV Rate 8.99

Each mil is worth \$ 158,414

Therefore, 1/2 mill is worth \$ 79,207

Therefore, 1/4 mil is worth \$ 39,604

to cover entire amount - .76 mills 120,000

to cover balance after above revenue 0.56 \$ 89,460

this would give a 9.55 millage rate

\$ 68.55 EACH of 1305 PROPERTIES

TOTAL \$ 120,000

Show Me:
Property Taxes

2009 COMBINED TAX MEMORANDUM NOTICE

NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

FOLIO NUMBER	MUNICIPALITY	MILL CODE
[REDACTED]	BISCAYNE PARK	1700

Search By:
Select Item

Owner's name & billing address:
[REDACTED]

Property address:
[REDACTED]

Exemptions:
HOMESTEAD

Detail Tax
Information:
Real Estate Tax Info
2009 Taxes
Prior Years Taxes

BISCAYNE PARK FL
331616366

for a change of billing address form click [here](#)

Due
2009 Ad Valorem
2009 Non-Ad Valorem
2009 Back
Assessments
2009 Enterprise Folio
2009 Historical
Abatements
2010 Quarterly
Payments
2009 Tax
Notice/Memorandum

Ad Valorem Taxes

Taxing Authority	Assessed Value	Millage rate per \$1,000 of Taxable Value	Taxes Levied
Miami-Dade School Board			
SCHOOL BOARD OPERATING	183,717	7.69800	158,717
SCHOOL BOARD DEBT SERVICE	183,717	.29700	158,717
State and others			
FLORIDA INLAND NAVIGATION DISTRICT	183,717	.03450	133,717
SOUTH FLORIDA WATER MGMT DISTRICT	183,717	.53460	133,717
EVERGLADES CONSTRUCTION PROJECT	183,717	.08940	133,717
CHILDRENS TRUST AUTHORITY	183,717	.50000	133,717
Miami-Dade County			
COUNTY WIDE OPERATING	183,717	4.83790	133,717
COUNTY WIDE DEBT SERVICE	183,717	.28500	133,717
LIBRARY DISTRICT	183,717	.38220	133,717
FIRE RESCUE OPERATING	183,717	2.18510	133,717
FIRE RESCUE DEBT SERVICE	183,717	.04200	133,717
Municipal Governing Board			
VILLAGE OF BISCAYNE PARK OPERATING	183,717	8.89030	133,717

Non-Ad Valorem Assessments

Levying Authority	Rate	Footage/Units	Amount
BISCAYNE PARK WASTE	558.0000	1.00	558.00

Combined taxes and assessments (gross amount) for 2009 : **\$4204.57**
4% Discount for November 2009 : **\$4036.39**

Bill Requested By: [REDACTED]

[Back](#)

[Property Tax Home](#) | [Real Estate Tax Info](#) | [2009 Taxes](#) | [Prior Years](#) | [2009 Non-Ad Valorem](#)
[2009 Back Assessments](#) | [2009 Enterprise Folio](#) | [2009 Historical Abatements](#) | [2010 Quarterly Payments](#) |
[2009 Tax Notice/Memorandum](#)

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ADOPTED BUDGET, 2009-2010, REVENUES

Village of Biscayne Park
Revenues
FY 2009-2010

FUND	GENERAL FUND	REVENUE				SCHEDULE			FY09-10 ADOPTED BUDGET
		FY07-08 AUDITED	FY08-09 ADOPTED BUDGET	FY08-09 YR TO DATE 7/31/2009	FY08-09 ESTIMATED TOTAL	FY09-10 MANAGER RECOMMENDED			
311.10.00	Real & Personal Property	1,692,975	1,504,156	1,565,933	1,600,933	1,424,144	1,424,144	1,424,144	
	Total Ad Valorem Taxes:	1,692,975	1,504,156	1,565,933	1,600,933	1,424,144	1,424,144	1,424,144	
313.10.00	Electric	115,686	125,000	94,112	112,934	125,000	125,000	125,000	
313.40.00	Gas/Propane								
	Total Franchise Fees:	115,686	125,000	94,112	112,934	125,000	125,000	125,000	
314.10.00	Electric	102,427	100,000	79,705	95,646	120,000	120,000	120,000	
314.40.00	Gas/Propane	5,523	6,000	6,040	7,248	5,500	5,500	5,500	
	Total Utility Service Taxes:	107,950	106,000	85,745	102,894	125,500	125,500	125,500	
315.10.01	Communications Service Tax	165,916	117,050	118,345	142,015	149,322	149,322	149,322	
	Total Communications Service Tax:	165,916	117,050	118,345	142,015	149,322	149,322	149,322	
322.10.00	Building Permits	72,493	85,000	49,655	59,586	68,600	68,600	68,600	
322.20.00	Electrical Permits	9,689	9,000	6,612	7,934	8,600	8,600	8,600	
322.30.00	Plumbing Permits	14,377	13,000	11,046	13,255	14,300	14,300	14,300	
322.40.00	Air Conditioning/Mechanical Permits	8,425	8,000	5,750	6,900	5,700	5,700	5,700	
322.60.00	Paint Permits	2,642	2,800	1,535	1,842	2,500	2,500	2,500	
322.70.00	Garage Sale	1,120	900	615	738	1,000	1,000	1,000	
322.80.00	Plan Review	1,660	1,000	450	540	1,000	1,000	1,000	
332.99.00	Permit Administrative Fee	24,899	20,000	12,463	14,956	20,000	20,000	20,000	
322.90.01	Variance Application Fee	150	500	500	600	250	250	250	
322.90.10	Variance Advertisement	980	500	774	929	1,000	1,000	1,000	
322.90.20	Variance Mailing Fees			70	84	100	100	100	
323.10.00	Re-Occupancy	2,160	2,100	2,650	3,180	2,100	2,100	2,100	
323.11.00	Contractor Registration	2,735	2,000	980	1,176	1,000	1,000	1,000	
323.12.00	Landlord Permit Fees	1,900	1,500	4,000	4,800	1,500	1,500	1,500	
323.13.00	Home Occupational Fees	850	500	1,000	1,200	750	750	750	
	Total (Village) Licenses & Permits:	144,080	146,800	98,099	117,719	128,400	128,400	128,400	

Village of Biscayne Park
Revenues
FY 2009-2010

FUND	GENERAL FUND	REVENUE				SCHEDULE			
		FY07-08 AUDITED	FY08-09 ADOPTED BUDGET	FY08-09 YR TO DATE 7/31/2009	FY08-09 ESTIMATED TOTAL	FY09-10 MANAGER RECOMMENDED	FY09-10 ADOPTED BUDGET		
	OBJECT: Revenue								
331.20.00	Federal Grants - COPS Grant								
331.30.00	Federal Grants - FEMA Reimbursement	26,896							
334.21.00	Federal Grants - Crime Prevention	3,760		81					
334.22.00	Grants - Other		-						
335.12.00	State Revenue Sharing	75,051	70,195	42,824	51,389	58,819	58,819		
335.18.00	Local Govt. 1/2 Cent Sales Tax	210,944	206,650	159,758	191,710	180,772	180,772		
338.30.00	Occupational Licenses - County	4,090	1,900	3,503	4,204	3,000	3,000		
	Total Intergovernmental Revenue:	320,741	278,745	206,167	247,303	242,591	242,591		
341.10.00	Recording Fees	18							
341.90.00	Sale of Maps & Publications								
341.20.00	Certification, Copies & Lien Search	4,305	3,000	2,908	3,490	3,500	3,500		
342.90.00	Public Safety Charges & Fees	35			-				
343.40.09	Garbage/Waste Revenue Write Off				-				
347.20.01	Recreation Program Fees	84,951	125,000	22,663	22,663	5,000	5,000		
347.20.02	Recreation - Concession Sales	8,321	15,000	6,827	8,192	5,000	5,000		
347.20.03	Other Parks & Rec. Fees (Special)	6,360	5,000	10,638	12,766	7,500	7,500		
	Total Service Revenue:	103,990	148,000	43,036	47,111	21,000	21,000		
351.01.00	Judgments/ Citations - Court Imposed	52,098	35,000	26,292	31,551	45,000	45,000		
354.00.01	Violations - Local Ordinance	49,600	25,000	22,639	27,167	25,000	25,000		
	Total Fines & Forfeitures:	101,698	60,000	48,931	58,717	70,000	70,000		
361.00.00	Interest	21,637	23,500	6,418	7,702	5,000	5,000		
369.01.00	Miscellaneous Other	9,080	6,000	12,246	12,246	5,000	5,000		
369.01.02	Insurance Proceeds	5,099		1,865	1,865	2,500	2,500		
369.02.00	Misc Newsletter Ads	1,750	4,500	50	50	500	500		
369.03.00	North Miami Beach Police Reimbursable	8,711							
369.05.00	Misc Donations	500		313	313	250	250		
	Administration Fee-Sanitation					50,000	50,000		
380.00.00	Fund Balance / Carryover		-			23,809	23,809		
380.01.00	Proceeds from Capital Lease								
	Total Miscellaneous Revenue:	46,777	34,000	20,911	22,195	87,059	87,059		
	TOTAL REVENUE:	2,799,813	2,519,751	2,281,280	2,451,821	2,373,016	2,373,016		

2008-2009 GAFF
 (Comprehensive Annual Financial Report)

Table 2
 Village of Biscayne Park
 Changes in Net Assets

	Governmental activities		Business-type activities		Total primary government		Total percentage change 2009-2008
	2009	2008	2009	2008	2009	2008	
Revenues:							
Program revenues:							
Charges for services	381,006	356,635	705,889	702,519	1,086,895	1,059,154	2.6%
Operating grants & Contributions	97,336	39,367	-	-	97,336	39,367	147.3%
Capital grants and Contributions	69,119	-	-	-	69,119	-	100.0%
General Revenues:							
Property taxes	1,568,450	1,692,975	-	-	1,568,450	1,692,975	-7.4%
Utility taxes	244,258	273,866	-	-	244,258	273,866	-10.8%
Franchise fees	115,272	115,686	-	-	115,272	115,686	-0.4%
Intergovernmental (unrestricted)	363,507	544,248	-	-	363,507	544,248	-33.2%
Investment income	7,853	24,048	-	-	7,853	24,048	-67.3%
Miscellaneous	23,712	15,927	-	-	23,712	15,927	48.9%
Total revenues	2,870,513	3,062,752	705,889	702,519	3,576,402	3,765,271	-5.0%
Expenses:							
General government	687,230	692,448	-	-	687,230	692,448	-0.8%
Public safety	1,404,364	1,365,832	-	-	1,404,364	1,365,832	2.8%
Building and code enforcement	178,535	193,301	-	-	178,535	193,301	-7.6%
Physical environment	454,919	566,017	687,885	690,416	1,142,804	1,256,433	-9.0%
Culture and recreation	186,011	298,812	-	-	186,011	298,812	-37.7%
Interest on long-term debt	4,872	2,772	-	-	4,872	2,772	75.8%
Total expenses	2,915,931	3,119,182	687,885	690,416	3,603,816	3,809,598	-5.4%
Transfers:		(6,896)		6,896		-	
Increase (decrease) in net asset	(45,418)	(63,326)	18,004	18,999	(27,414)	(44,327)	-38.2%
Net assets, beginning	1,949,318	2,012,644	18,999	-	1,968,317	2,012,644	-2.2%
Net assets, ending	1,903,900	1,949,318	37,003	18,999	1,940,903	1,968,317	-1.4%

For FY 2009, total revenues decreased \$188,869. Property tax revenues decreased \$124,525 or 7.4%, unrestricted intergovernmental revenues decreased \$180,741 or 33.2% and investment income decreased \$16,195 or 67.3%. These decreases are a direct result of the housing market crisis and the downturn in the economy.

The impact of the decrease in revenue was offset by an increase in grant revenue of \$127,088. In addition, expenses decreased \$205,782 or 5.4%. This decrease is attributable to a reduction in public works expense of \$113,629 due to staffing reductions and a reduction in culture and recreation of \$112,801 due to the elimination of recreation programs.

Figure A-1
Village of Biscayne Park
Revenues by Source – Governmental Activities
For the Fiscal Year Ended September 30, 2009

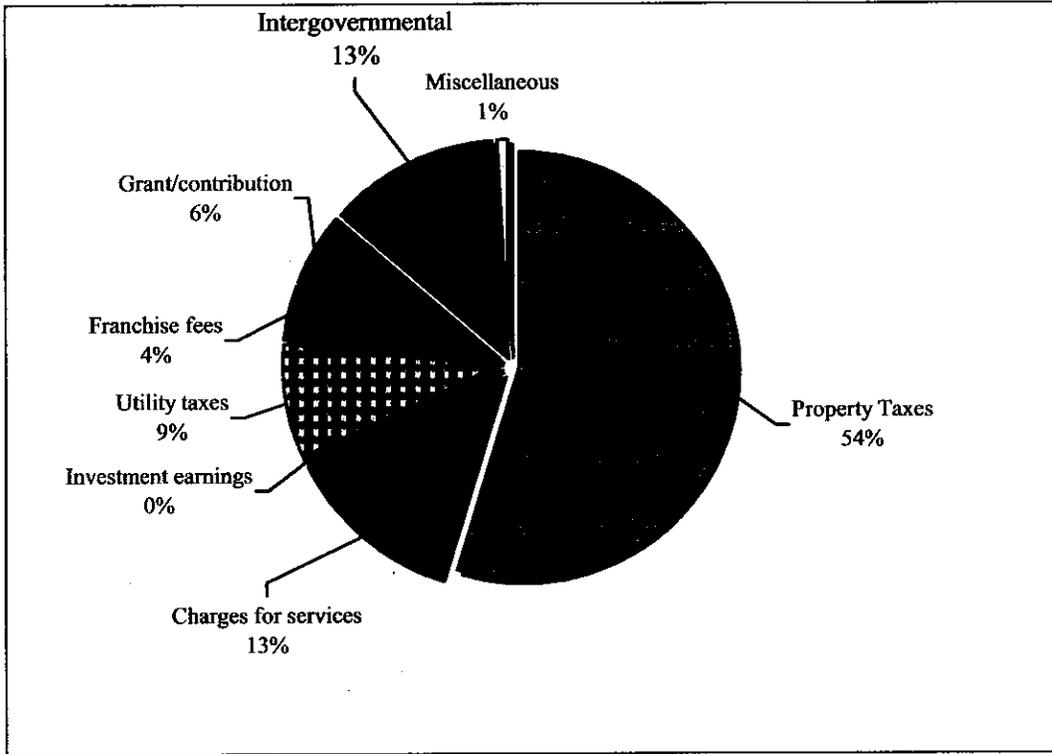
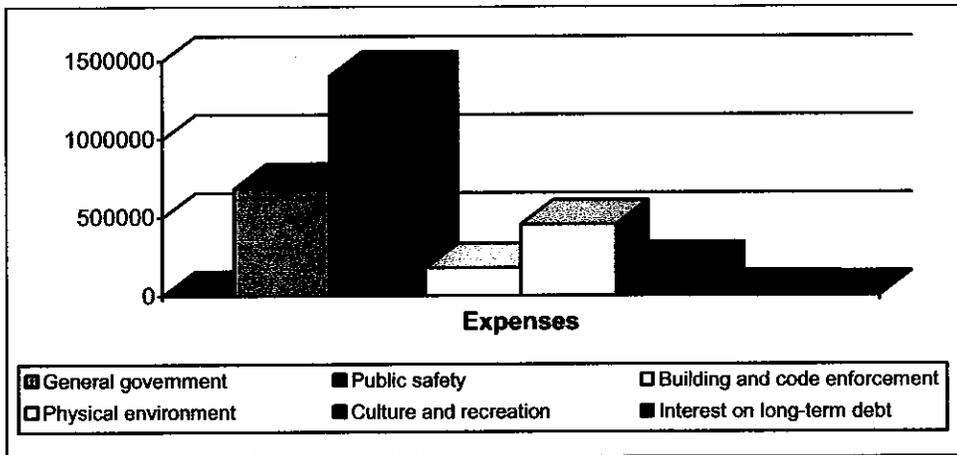


Figure A-2
Village of Biscayne Park
Expenses – Governmental Activities
For the Fiscal Year Ended September 30, 2009



TYPICAL SPECIAL ASSESSMENT PROGRAM F.A.Q.'S
(FIRE RESCUE IS USED AS AN EXAMPLE)



The notice of the fire rescue assessment for Fiscal Year 2008-2009 contains the legal information required by State law. The information in this document has been prepared to clarify the information in the notice and to answer some of the questions property owners may have regarding the City's fire rescue assessment program.

Q: What is the purpose of the fire rescue services special assessment?

A. The fire rescue assessment will be used to pay for a portion of the costs and improvements of fire rescue services to properties in the City.

Q. What period of time does the assessment cover and when will the assessment be payable?

A. The fire rescue assessment is re-imposed annually and will cover October 1 – September 30 of each fiscal year. It is payable, as part of your tax bill, each year between November 1 and March 31.

Q. How will the City's Charter provision for a spending cap be applied to a fire assessment program?

A. Annual expenditures for the City of Marco Island are limited by a Charter provision for a spending cap. That provision limits the growth in annual budgets to the prior year's level plus the annual change in the cost of living index (COLA) and a 3% annual growth factor. Several items are not subject to the spending cap; they include Budgeted But Not Expended Funds, Expenditures Financed by Grants, Gifts and Impact Fees, Enterprise Funds, and Capital Projects Financed with Municipal Bonds. However, a fire assessment program does not fit these exceptions and therefore, would fall under the City's Charter provision for a spending cap.

Q. Why use special assessments to fund fire rescue services? What is the difference between the fire rescue assessment and the property taxes I pay the City?

A. The use of special assessments requires the City to meet the Florida case law requirements for a valid special assessment including fair and reasonable apportionment. This means that unlike taxes, which can be used for any general purpose, fire rescue special assessments must be developed to recover each property's proportionate share of the costs of providing fire rescue services. Under the City's approach, this means the owner of each improved property will pay their proportionate share of the costs of making these fire rescue services available regardless of their tax-exempt status.

Q. Why is the City using the tax bill collection method to collect the assessments?

A. "Piggy-backing" the collection method on the annual property tax bill (1) saves money for everyone by reducing the administrative costs of the program, (2) results in a stable revenue source to fund fire rescue services, and (3) is more fair to property owners who pay on time as well as those who may be delinquent in their payments.

Q. What benefits will the program provide to property owners in the City of Marco Island?

A. You will continue to receive the excellent service you have come to expect. The fire rescue assessment program provides a cost-effective and financially-stable means of funding fire rescue services and facilities for years to come, stability in insurance rates, rescue of public safety, enhancement of property value and better service to property and its occupants.

50 BALD EAGLE DRIVE, MARCO ISLAND, FLORIDA, 34145, 239-389-5040
WWW.CITYOFMARCOISLAND.COM

Q. What will happen if I do not pay the assessment?

A. Because the City is using the tax bill collection method, Florida law requires that all ad valorem taxes and the accompanying fire rescue assessments be paid at the same time. If you do not pay your taxes and the fire rescue assessments, a lien will be placed against your property equal in rank and dignity with the liens of all state, county and municipal taxes and special assessments.

Q. I don't pay taxes now due to homestead exemption. Will I have to pay the special assessments?

A. Yes. Special assessments are different than taxes and the fire rescue special assessment applies to all residential property uses regardless of homestead exemption.

Q. What if I am concerned that I cannot pay the full assessment amount at one time?

A. If you make monthly mortgage payments, it is likely that this amount will be escrowed by your mortgage holder much like property taxes and your monthly payment will include this assessment. Alternatively, if you would like to make installment payments, you might wish to contact the Collier County Tax Collector at (239) 252-8171 to arrange to participate in the quarterly installment program for the payment of taxes and assessments.

Q. I received a discount for early payment of my taxes. Will I receive the same discount for my special assessment?

A. Yes. The same discounts and penalties applicable to ad valorem taxes have been addressed in the fire rescue budget and will also apply to special assessments collected on the tax bill.

Q. I currently claim a deduction for property taxes on my income tax return each year; can I claim a deduction for the fire rescue special assessment?

A. This is a question for your tax adviser. However, generally a special assessment against your residence is not a valid income tax deduction. However, if you own rental property or a business, the special assessment may be deductible when computing your income taxes. Please contact your accountant or income tax preparer for information regarding your specific situation.

Q. I have a tenant in my house. Should the tenant pay the assessment or will I have to pay it as property owner?

A. Like property taxes, special assessments are billed to property owners only; each property owner or landlord will have to determine if and how the tenant should share in the assessment costs.

Q. Is the assessment notice a bill?

A. No, this is preliminary notice of the fire rescue assessment that will appear as an additional line item on your property tax bill in November.

Q. What if the information contained on the assessment notice is incorrect? How do I get it corrected?

A. If information on the notice is incorrect, City staff will process the appropriate forms and research the issue. The corrections will be made to the assessment roll before certifying it to the Tax Collector for placement on the tax bill. You may contact the City of Marco Island (239) 389-5040, Monday – Friday between 9:00 a.m. – 5:00 p.m.

Q. What will happen at the public hearing scheduled for August 18, 2008?

A. At the public hearing on August 18, 2008, the City Council will hear comments from the public regarding the preliminary rates established for this revenue source. After receiving comments, the City Council will finalize its decision regarding the rates of assessment.

Q. Where can I get more information?

A. If you have a question regarding the fire rescue assessment, you may contact the City of Marco Island (239) 389-5040, Monday – Friday between 9:00 a.m. – 5:00 p.m.

SPECIAL ASSESSMENT - FLORIDA LAW

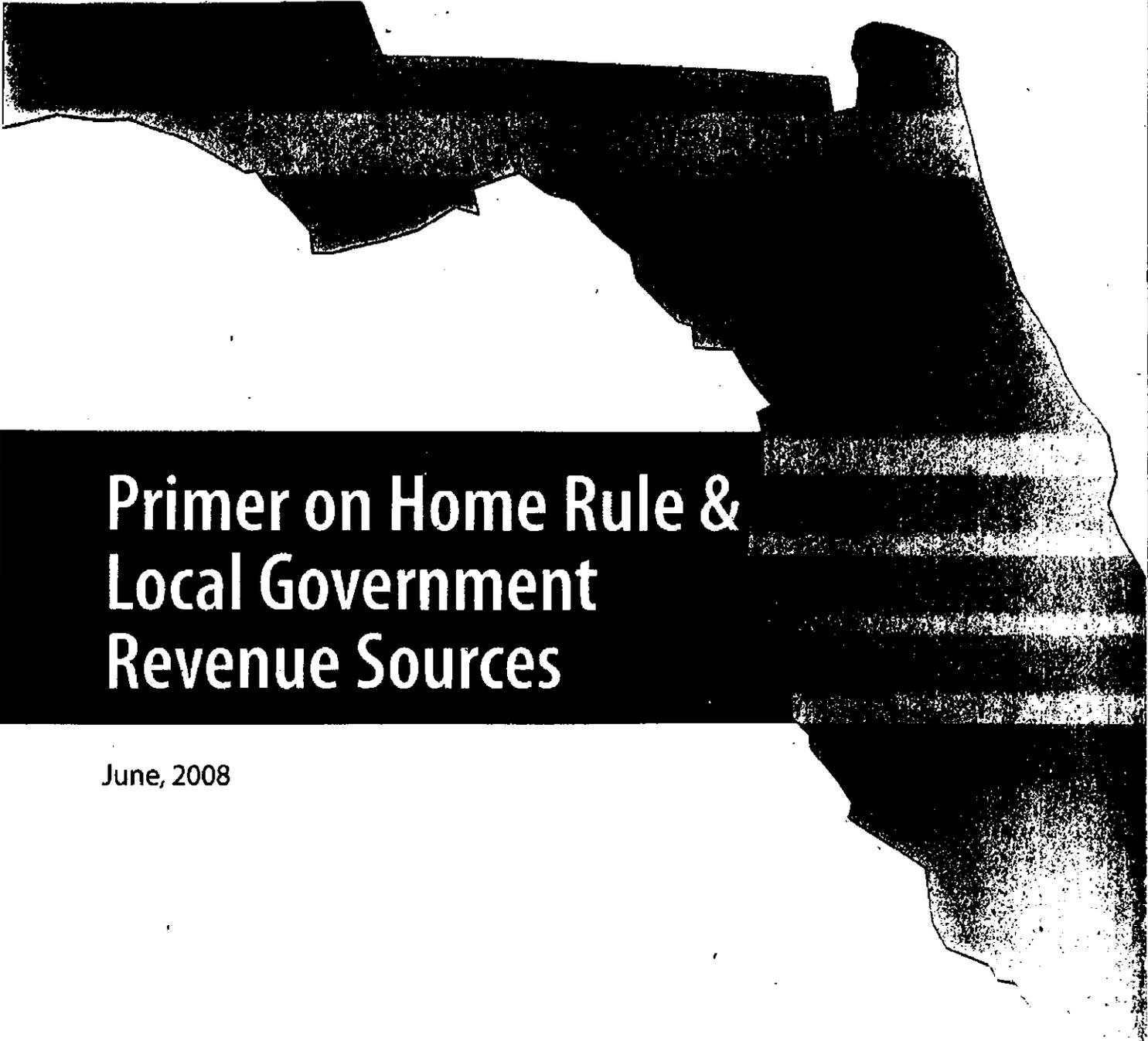
12D-18.009 Non-Ad Valorem Assessments Imposed After January 1, 1990.

(1) Effective January 1, 1990, no new non-ad valorem assessments, including new special assessments, may be collected pursuant to Section 197.363, F.S. New non-ad valorem assessments, new special assessments and non-ad valorem assessments for which an election has been made by a local governing board pursuant to Section 197.363(1), F.S., to be collected pursuant to Chapter 197, F.S., shall be collected after January 1, 1990, as provided in Sections 197.3631, 197.3632, 197.3635, F.S.

(2) Effective January 1, 1990, any alternative method authorized by law under which non-ad valorem assessments are levied, certified, and collected shall not require the tax collector or the property appraiser to perform any service as set forth in Sections 197.3632 and 197.3635, F.S. Under such an alternative method, the property appraiser or tax collector may contract with a local government to supply information and services necessary for any such alternative method.

(3) Effective January 1, 1990, a county operating under a charter adopted pursuant to Article VIII, section 11, Florida Constitution (1885), referred to in Article VIII, section 6(e), Florida Constitution (1968), may use any alternative method authorized by law under which non-ad valorem assessments are imposed and collected, but may not use the method in Section 197.363, F.S.

Specific Authority 195.027(1), 197.3632(11), 197.3635, 213.06(1) FS. Law Implemented 197.322, 197.363, 197.3631, 197.3632, 197.3635, 213.05 FS. History—New 2-21-91.



Primer on Home Rule & Local Government Revenue Sources

June, 2008

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5.05. Special Assessments.

Increasingly, counties and municipalities have utilized special assessments as a home rule revenue source to fund certain services and to construct and maintain capital facilities.

As established by case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992).

The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service is

whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).

Lake County v. Water Oak Management Corp., 695 So. 2d 667, 669 (Fla. 1997). This logical relationship to property test defines the line between those services that can be funded by special assessments and those failing to satisfy the special benefit test.

General governmental functions such as indigent health care, general law enforcement activities and the general provision of government fail to bear a logical relationship to property and thus are required to be funded by taxes.

Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include: garbage disposal, Harris v. Wilson, 693 So. 2d 945 (Fla. 1997) and Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977); sewer improvements, City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970) and Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969); fire protection, South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973) and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969); fire and rescue services, Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So. 2d 180 (Fla. 1995); Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997); City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla. 4th DCA 1999), rev. den'd, 741 So. 2d 1136 (Fla. 1999); street improvements, Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922) and Bodner v. City of Coral Gables, 245 So. 2d 250 (Fla. 1971); parking facilities, City of Naples v. Moon, supra; downtown redevelopment, City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992); stormwater management services, Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995); and water and sewer line extensions, Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995).

Once an identified service or capital facility satisfies the special benefit test, the assessed amount is required to be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

Generally, a special assessment, whether imposed for capital projects or services, is collected on the annual ad valorem tax bill. Under such statutory collection procedure, the special assessment is characterized as a "non-ad valorem assessment." See § 197.3632(1)(d), Fla. Stat.

The 2009 Florida Statutes

CHAPTER 197

TAX COLLECTIONS, SALES, AND LIENS

197.363 Special assessments and service charges; optional method of collection.--

(1) At the option of the property appraiser, special assessments collected pursuant to this section prior to January 1, 1990, may be collected pursuant to this section after January 1, 1990. However, any local governing board collecting non-ad valorem assessments pursuant to this section on January 1, 1990, may elect to collect said assessments pursuant to s. 197.3632. In the event of such election, the local governing board shall notify the property appraiser and tax collector in writing and comply with s. 197.3632(2) and the applicable certification provisions of s. 197.3632(5). If a local governing board amends any non-ad valorem assessment roll certified under this provision, the local governing board shall comply with all applicable provisions of s. 197.3631.

(2) In accordance with subsection (1), special assessments authorized by general or special law or the State Constitution may be collected as provided for ad valorem taxes under this chapter if:

(a) The entity imposing the special assessment has entered into a written agreement with the property appraiser, at her or his option, providing for reimbursement of administrative costs incurred under this section;

(b) A resolution authorizing use of this method for collection of special assessments is adopted at a public hearing;

(c) Affected property owners have been provided by first-class mail prior notice of both the potential for loss of title that exists with use of this collection method and the time and place of the public hearing required by paragraph (b);

(d) The property appraiser has listed on the assessment roll the special assessment for each affected parcel;

(e) The dollar amount of the special assessment has been included in the notice of proposed property taxes; and

(f) The dollar amount of the special assessment has been included in the tax notice issued pursuant to s. 197.322.

(3) When collected by using the method provided for ad valorem taxes, special assessments shall be subject to all collection provisions of this chapter, including provisions relating to discount for early payment, prepayment by installment method, penalty for delinquent payment, and issuance of tax certificates and tax deeds for nonpayment, and shall also be subject to the provisions of s. 192.091(2)(b)2.

(4) If the requirements of subsection (2) which are imposed upon the collection of special assessments are not met, the collection of such special assessments shall be by the manner provided in the ordinance or resolution establishing such special assessments. The manner of collection established in any ordinance or resolution shall be in compliance with all general or special laws authorizing the levy of such special assessments, and in no event shall the ordinance or resolution provide for use of the ad valorem collection method.

(5) The tax collector of a county may act as agent for the county in collecting service charges if the board of county commissioners of the county and the tax collector establish by agreement a manner in which service charges may be collected. The board of county commissioners shall compensate the tax collector for the actual cost of collecting such service charges. However, tax certificates and tax deeds may not be issued for nonpayment of service charges, and such charges shall not be included on a bill for ad valorem taxes.

(6) Effective January 1, 1990, no new special assessments may be collected pursuant to this section.

History.--s. 162, ch. 85-342; s. 2, ch. 86-141; s. 66, ch. 88-130; s. 5, ch. 88-216; s. 1012, ch. 95-147.

197.3631 Non-ad valorem assessments; general provisions.--Non-ad valorem assessments as defined in s. 197.3632 may be collected pursuant to the method provided for in ss. 197.3632 and 197.3635. Non-ad valorem assessments may also be collected pursuant to any alternative method which is authorized by law, but such alternative method shall not require the tax collector or property appraiser to perform those services as provided for in ss. 197.3632 and 197.3635. However, a property appraiser or tax collector may contract with a local government to supply information and services necessary for any such alternative method. Section 197.3632 is additional authority for local governments to impose and collect non-ad valorem assessments supplemental to the home rule powers pursuant to ss. 125.01 and 166.021 and chapter 170, or any other law. Any county operating under a charter adopted pursuant to s. 11, Art. VIII of the Constitution of 1885, as amended, as referred to in s. 6(e), Art. VIII of the Constitution of 1968, as amended, may use any method authorized by law for imposing and collecting non-ad valorem assessments.

History.--s. 67, ch. 88-130; s. 6, ch. 88-216; s. 7, ch. 90-343.

197.3632 Uniform method for the levy, collection, and enforcement of non-ad valorem assessments.--

(1) As used in this section:

(a) "Levy" means the imposition of a non-ad valorem assessment, stated in terms of rates, against all appropriately located property by a governmental body authorized by law to impose non-ad valorem assessments.

(b) "Local government" means a county, municipality, or special district levying non-ad valorem assessments.

(c) "Local governing board" means a governing board of a local government.

(d) "Non-ad valorem assessment" means 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.

(e) "Non-ad valorem assessment roll" means the roll prepared by a local government and certified to the tax collector for collection.

(f) "Compatible electronic medium" or "media" means machine-readable electronic repositories of data and information, including, but not limited to, magnetic disk, magnetic tape, and magnetic diskette technologies, which provide without modification that the data and information therein are in harmony with and can be used in concert with the data and information on the ad valorem tax roll keyed to the property identification number used by the property appraiser.

(g) "Capital project assessment" means a non-ad valorem assessment levied to fund a capital project, which assessment may be payable in annual payments with interest, over a period of years.

(2) A local governing board shall enter into a written agreement with the property appraiser and tax collector providing for reimbursement of necessary administrative costs incurred under this section. Administrative costs shall include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage, and programming.

(3)(a) Notwithstanding any other provision of law to the contrary, a local government which is authorized to impose a non-ad valorem assessment and which elects to use the uniform method of collecting such assessment for the first time as authorized in this section shall adopt a resolution at a public hearing prior to January 1 or, if the property appraiser, tax collector, and local government agree, March 1. The resolution shall clearly state its intent to use the uniform method of collecting such assessment. The local government shall publish notice of its intent to use the uniform method for collecting such assessment weekly in a newspaper of general circulation within each county contained in the boundaries of the local government for 4 consecutive weeks preceding the hearing. The resolution shall state the need for the levy and shall include a legal description of the boundaries of the real property subject to the levy. If the resolution is adopted, the local governing board shall send a copy of it by United States mail to the property appraiser, the tax collector, and the department by January 10 or, if the property appraiser, tax collector, and local government agree, March 10.

(b) Annually by June 1, the property appraiser shall provide each local government using the uniform method with the following information by list or compatible electronic medium: the legal description of the property within the boundaries described in the resolution, and the names and addresses of the owners of such property. Such information shall reference the property identification number and otherwise conform in format to that contained on the ad valorem roll submitted to the department. The property appraiser is not required to submit information which is not on the ad valorem roll or compatible electronic medium submitted to the department. If the local government determines that the information supplied by the property appraiser is insufficient for the local government's purpose, the local government shall obtain additional information from any other source.

(4)(a) A local government shall adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

1. The non-ad valorem assessment is levied for the first time;
2. The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
3. 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
4. There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

(b) At least 20 days prior to the public hearing, the local government shall notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice by mail shall be sent to each person owning property subject to the assessment and shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the assessment; a statement that failure to pay the assessment will cause a tax

certificate to be issued against the property which may result in a loss of title; a statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and the date, time, and place of the hearing. However, notice by mail shall not be required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days prior to the authority's public hearing on adoption of a new or amended non-ad valorem assessment roll. The published notice shall 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.

(c) At the public hearing, the local governing board shall receive the written objections and shall hear testimony from all interested persons. The local governing board may adjourn the hearing from time to time. If the local governing board adopts the non-ad valorem assessment roll, it shall specify the unit of measurement for the assessment and the amount of the assessment. Notwithstanding the notices provided for in paragraph (b), the local governing board may adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment.

¹(5)(a) By September 15 of each year, the chair of the local governing board or his or her designee shall certify a non-ad valorem assessment roll on compatible electronic medium to the tax collector. The local government shall post the non-ad valorem assessment for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the non-ad valorem assessment for each parcel. It is the responsibility of the local governing board that such roll be free of errors and omissions. Alterations to such roll may be made by the chair or his or her designee up to 10 days before certification. If the tax collector discovers errors or omissions on such roll, he or she may request the local governing board to file a corrected roll or a correction of the amount of any assessment.

(b) Beginning in 2009, by December 15 of each year, the tax collector shall provide to the department a copy of each local governing board's non-ad valorem assessment roll containing the data elements and in the format prescribed by the executive director. In addition, beginning in 2008, a report shall be provided to the department by December 15 of each year for each non-ad valorem assessment roll, including, but not limited to, the following information:

1. The name and type of local governing board levying the non-ad valorem assessment;
2. Whether or not the local government levies a property tax;
3. The basis for the levy;
4. The rate of assessment;
5. The total amount of non-ad valorem assessment levied; and
6. The number of parcels affected.

(6) 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 shall so specify and shall not be required to annually adopt the non-ad valorem assessment roll, and shall not be required to provide individual notices to each taxpayer unless the provisions of subsection (4) apply. Notice

of an assessment, other than that which is required under subsection (4), may be provided by including the assessment in the property appraiser's notice of proposed property taxes and proposed or adopted non-ad valorem assessments under s. 200.069. However, the local governing board shall inform the property appraiser, tax collector, and department by January 10 if it intends to discontinue using the uniform method of collecting such assessment.

(7) Non-ad valorem assessments collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge a non-ad valorem assessment roll to produce such a notice, he or she shall mail a separate notice of non-ad valorem assessments or shall direct the local government to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the local government and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The local government whose roll could not be merged shall bear all costs associated with the separate notice.

(8)(a) Non-ad valorem assessments collected pursuant to this section shall be subject to all collection provisions of this chapter, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

(b) Within 30 days following the hearing provided in subsection (4), any person having any right, title, or interest in any parcel against which an assessment has been levied may elect to prepay the same in whole, and the amount of such assessment shall be the full amount levied, reduced, if the local government so provides, by a discount equal to any portion of the assessment which is attributable to the parcel's proportionate share of any bond financing costs, provided the errors and insolvency procedures available for use in the collection of ad valorem taxes pursuant to s. 197.492 are followed.

(c) Non-ad valorem assessments shall also be subject to the provisions of s. 192.091(2)(b), or the tax collector at his or her option shall be compensated for the collection of non-ad valorem assessments based on the actual cost of collection, whichever is greater. However, a municipal or county government shall only compensate the tax collector for the actual cost of collecting non-ad valorem assessments.

(9) A local government may elect to use the uniform method of collecting non-ad valorem assessments as authorized by this section for any assessment levied pursuant to general or special law or local government ordinance or resolution, regardless of when the assessment was initially imposed or whether it has previously been collected by another method.

(10)(a) Capital project assessments may be levied and collected before the completion of the capital project.

(b)1. Except as provided in this subsection, the local government shall comply with all of the requirements set forth in subsections (1)-(8) for capital project assessments.

2. The requirements set forth in subsection (4) are satisfied for capital project assessments if:

a. The local government adopts or reaffirms the non-ad valorem assessment roll at a public hearing held at any time before certification of the non-ad valorem assessment roll pursuant to subsection (5) for the first year in which the capital project assessment is to be collected in the manner authorized by this section; and

b. The local government provides notice of the public hearing in the manner provided in paragraph (4)(b).

3. The local government is not required to allow prepayment for capital project assessments as set forth in paragraph (8)(b); however, if prepayment is allowed, the errors and insolvency procedures available for use in the collection of ad valorem taxes pursuant to s. 197.492 must be followed.

(c) Any hearing or notice required by this section may be combined with any other hearing or notice required by this section or by the general or special law or municipal or county ordinance pursuant to which a capital project assessment is levied.

(11) The department shall adopt rules to administer this section.

History.--s. 68, ch. 88-130; s. 7, ch. 88-216; s. 8, ch. 90-343; s. 2, ch. 91-238; s. 1013, ch. 95-147; s. 1, ch. 97-66; s. 1, ch. 2003-70; s. 10, ch. 2008-173.

¹**Note.**--Section 13, ch. 2008-173, provides that:

"(1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

"(2) Notwithstanding any other provision of law, such emergency rules shall remain in effect for 18 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules."

197.3635 Combined notice of ad valorem taxes and non-ad valorem assessments; requirements.--A form for the combined notice of ad valorem taxes and non-ad valorem assessments shall be produced and paid for by the tax collector. The form shall meet the requirements of this section and department rules and shall be subject to approval by the department. By rule the department shall provide a format for the form of such combined notice. The form shall meet the following requirements:

(1) It shall contain the title "Notice of Ad Valorem Taxes and Non-ad Valorem Assessments." It shall also contain a receipt part that can be returned along with the payment to the tax collector.

(2) It shall provide a clear partition between ad valorem taxes and non-ad valorem assessments. Such partition shall be a bold horizontal line approximately 1/8 inch thick.

(3) Within the ad valorem part, it shall contain the heading "Ad Valorem Taxes." Within the non-ad valorem assessment part, it shall contain the heading "Non-ad Valorem Assessments."

(4) It shall contain the county name, the assessment year, the mailing address of the tax collector, the mailing address of one property owner, the legal description of the property to at least 25 characters, and the unique parcel or tax identification number of the property.

(5) It shall provide for the labeled disclosure of the total amount of combined levies and the total discounted amount due each month when paid in advance.

(6) It shall provide a field or portion on the front of the notice for official use for data to reflect codes useful to the tax collector.

(7) The combined notice shall be set in type which is 8 points or larger.

(8) The ad valorem part shall contain the following:

- (a) A schedule of the assessed value, exempted value, and taxable value of the property.
 - (b) Subheadings for columns listing taxing authorities, corresponding millage rates expressed in dollars and cents per \$1,000 of taxable value, and the associated tax.
 - (c) Taxing authorities listed in the same sequence and manner as listed on the notice required by s. 200.069(4)(a), with the exception that independent special districts, municipal service taxing districts, and voted debt service millages for each taxing authority shall be listed separately. If a county has too many municipal service taxing units to list separately, it shall combine them to disclose the total number of such units and the amount of taxes levied.
- (9) Within the non-ad valorem assessment part, it shall contain the following:
- (a) Subheadings for columns listing the levying authorities, corresponding assessment rates expressed in dollars and cents per unit of assessment, and the associated assessment amount.
 - (b) The purpose of the assessment, if the purpose is not clearly indicated by the name of the levying authority.
 - (c) A listing of the levying authorities in the same order as in the ad valorem part to the extent practicable. If a county has too many municipal service benefit units to list separately, it shall combine them by function.
- (10) It shall provide instructions and useful information to the taxpayer. Such information and instructions shall be nontechnical to minimize confusion. The information and instructions required by this section shall be provided by department rule and shall include:
- (a) Procedures to be followed when the property has been sold or conveyed.
 - (b) Instruction as to mailing the remittance and receipt along with a brief disclosure of the availability of discounts.
 - (c) Notification about delinquency and interest for delinquent payment.
 - (d) Notification that failure to pay the amounts due will result in a tax certificate being issued against the property.
 - (e) A brief statement outlining the responsibility of the tax collector, the property appraiser, and the taxing authorities. This statement shall be accompanied by directions as to which office to contact for particular questions or problems.

History.--s. 69, ch. 88-130; s. 8, ch. 88-216.



SPECIAL ASSESSMENT - IS IT TRICKLES TO ? IS ADMINISTERED FOR STORMWATER

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About Us

The Florida Stormwater Association (FSA) was formed in 1993 as the Florida Association of Stormwater Utilities to serve professionals in stormwater management and finance. Our name was changed in June 2001 to more accurately reflect its broad interests in stormwater management services, in addition to stormwater finance. FSA provides three basic services for its members: Training and Education; Technical Assistance and Information Sharing; and, Advocacy and Legislative Relations. A 22-member Board of Directors and 4-member Executive Committee govern the Association. FSA is a 501 (c) (4) non-profit corporation.

The FSA Educational Foundation is a 501(c) (3) corporation established in 2003 to assist in expanding and improving education, training, and research for the stormwater management profession. The Foundation does this through the Florida Stormwater Association's scholarship program and the Research Advisory Council.

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Deputy Director: [Danielle Hopkins](#)
Director of Member Services: [Gwen Erwin](#)
Training Center Coordinator: [Heather Peeples](#)



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6.3 Special Assessments as a Collection Device

Special assessments are somewhat unique funding devices resulting from a blending of Florida case law, state statutes, and constitutional provisions regarding home rule. Special assessments are not new revenue sources; they have been in existence for decades in Florida. This extensive history means that case law discussing special assessments is well developed.

● [6.1 Comparing and Selecting Billing Methods](#)

● [6.2 User Fees as a Collection Device](#)

● [6.3 Special Assessments as a Collection Device](#)

The courts define special assessments as "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money." Special assessments are imposed on the owners of property in exchange for a special benefit rendered to the property. Special assessments are distinguished from taxes in that there is no requirement for taxes to show a specific benefit to the taxpayer, while a clear special benefit must flow from the assessing government to the payer of an assessment (the owner of the property). The terms "special assessment," "non-ad valorem assessment," and "assessment" all mean the same thing and are used interchangeably.

The Florida Supreme Court has expressly ruled that the authority to impose special assessments is embodied in home rule authority for both counties and cities. The courts have identified a two-part test for establishing a valid special assessment. The assessment must provide "special benefit" to the property assessed and it must be "fair and reasonably apportioned" among the benefited properties. These criteria must be embodied in the rate structure itself so that the calculation of the special assessment for any given property incorporates these concepts into each bill rendered.

Special assessments can only be used for the purposes for which they were imposed. To ensure that this requirement is met, funds from special assessments should be appropriated, deposited, and disbursed through a stormwater special revenue fund so that assessment dollars are used solely for appropriated purposes, and so that fund balances do not lapse into any other fund. Proceeds from a capital assessment may be deposited into a special revenue fund or directly into capital project funds. This ensures accountability because the funds must be matched to eligible stormwater programs and projects.

The courts recognize two types of assessments: service assessments and capital assessments. *Service* assessments are used solely to recover costs of rendering services of special benefit to a given property. The assessments are recurrent for as long as the County Commission or City Council/Commission wishes to use them to recover annual costs. *Capital* assessments are used to recover debt service (principal and interest) or the capital share of construction projects. Capital assessments are imposed for a time certain (usually the payback life of the debt instrument where debt is used), and typically cease once the project expenses are paid.

The legal distinctions between a fee and an assessment and the specific legal nature of each are thoroughly discussed in [Chapter 2](#). Many aspects of utility creation are the same for assessments and fees. While certain legal distinctions between fees and assessments are important, the major distinctions between the two lie in how the revenues are collected.

6.3.1 Assessment Collection Options

A jurisdiction has three realistic options available to it for collecting a stormwater special assessment. These are:

1. The uniform collection method
2. The uniform collection method with an option to receive individual bills
3. The lien and foreclosure method with collection of delinquencies under the uniform collection method

A fourth method is also technically available -- the "pure" lien and foreclosure method where delinquency in payment of an assessment triggers tax foreclosure on the property. However, the use of this method is not advantageous to a jurisdiction for two main reasons. First, it requires an extraordinary exercise of political will to foreclose on any residential property; and second, the foreclosure process is frequently challenged, resulting in protracted litigation before payment. Furthermore, when the assessment is for recurring annual services, not capital infrastructure, the foreclosure process must be repeated for each year the special assessment is imposed and not paid. Finally, the lien and foreclosure method of enforcing special assessments does not lend itself to financing capital improvements because the collection rate is not as dependable or predictable as the rate under the uniform collection method.

Option 1 - The Uniform Collection Method

State statutes provide that special assessments that meet the special benefit, and fair and reasonable apportionment requirements may be collected on the annual ad valorem tax bill by a jurisdiction's tax collector. The stormwater special assessment would appear on the combined notice of ad valorem taxes and non-ad valorem assessments, which act as a lien imposed against the property. A jurisdiction may use this uniform collection method for collecting and enforcing the stormwater special assessments when it follows the procedure described in Section 197.3632, Florida Statutes.

The uniform collection method offers great advantages to a jurisdiction. When the uniform collection method is used to collect special assessments, local governments benefit from an exceedingly high collection rate. In fact, a jurisdiction could anticipate that its rate of collection on special assessments would be the same as its rate of collection of ad valorem taxes. Under such statutory procedure, the ad valorem taxes cannot be paid separately. Both ad valorem taxes and non-ad valorem assessments are required to be paid to satisfy the statutory lien. For most jurisdictions, this collection rate typically exceeds 95%. If however, a property owner fails to pay the special assessment, under the uniform collection method, a jurisdiction has the right to sell a tax certificate, which ensures that a jurisdiction will be paid the amount of the special assessment that is owed. This tax certificate process also provides the property owner two years within which it may pay its delinquent taxes and special assessments without the issuance of a tax deed becoming a reality. The tax certificate process is discussed in more detail at the end of this chapter.

Thus, the uniform collection method offers a jurisdiction the greatest assurances of collecting all of its billed stormwater special assessment revenue, while at the same time offering the fairness of two years for any delinquent property owners to pay the assessment and avoid the issuance of a tax deed.

Option 2 - Uniform Collection Method with Option to Receive Periodic Individual Bills

A second option that is available to a jurisdiction involves a modification to the full-scale uniform collection method. A jurisdiction can prepare a non-ad valorem assessment roll, just as with the uniform collection method, but offer property owners the option to receive individual, periodic stormwater bills (for example, monthly or quarterly), instead of the assessment appearing on the property tax bill.

While election of this option by the property owner allows a property owner to pay its stormwater special assessment over the course of a year in several installments, this option presents enforcement problems similar to those encountered with the lien and foreclosure method. To avoid these collection problems, a jurisdiction could, in the event of any such delinquencies, collect the charges as non-ad valorem assessments on the next year's non-ad valorem assessment roll (pre-empting the owner's option for periodic billing for any delinquent parcels). This delinquency would appear on the property owner's annual tax bill, assuring that a jurisdiction has all the mechanisms available to effect collection of delinquencies under the uniform collection method.

Option 3 - Lien and Foreclosure Method, Collecting Delinquencies under the Uniform Collection Method

Finally, a jurisdiction could choose to collect the stormwater special assessments, that meet the special benefit and fair and reasonable apportionment requirements, by sending out a separate bill for the special assessment to each subject property. This method is sometimes called the "traditional method" since it was the predominate method for imposing assessments for decades until passage of the Uniform Collections Act in 1989. Payment of the bill may be enforced in one of two ways, either through a lien and foreclosure against the property, or under the uniform collection method in the subsequent year. As described earlier, the lien and foreclosure method is politically difficult and practically disadvantageous. The combination of a separate bill with the option to enforce non-payment through the uniform collection method helps to cure some of the practical disadvantages with lien and foreclosure enforcement mechanisms.

Experience indicates that, of the available assessment methodologies, the use of the Uniform Collection Method to collect and enforce the stormwater special assessments offers the greatest administrative ease and the greatest predictability of collection rate.

6.3.2 The Mechanics of the Uniform Method of Collection

State statutes specifically detail the steps required for using the Uniform Method of collecting the stormwater special assessment on the same bill as ad valorem taxes. To use the tax bill collection process, a jurisdiction must carefully follow the strict procedures provided in the Uniform Method. These procedures and their required deadlines (see *Table 6-3*) are discussed in the following paragraphs of this section.

Table 6-3

Requirements of the Uniform Method of Collection

Requirement	Deadline
Notice of Intent - Published for four consecutive weeks prior to public hearing	Prior to January 1 (or March 1 if agreed to by Property Appraiser, Tax Collector, and Jurisdiction).
Adopted Resolution - Sent to Property Appraiser, Tax Collector, and Florida Dept. of Revenue.	By January 10 (or March 10 if agreed to by Property Appraiser, Tax Collector, and Jurisdiction).
Assessment Roll - Adopted at a properly noticed public meeting	Between June 1 and September 15.

Notice of Intent

A jurisdiction must initiate the process almost a year before it intends to begin using the Uniform Method to collect the assessments. The process begins by passing a resolution of intent (called the "Notice of Intent") prior to January 1 or, if the property appraiser, tax collector, and local government agree, March 1.

A jurisdiction must publish notice of its intent to consider a resolution to use the Uniform Method weekly for four consecutive weeks prior to a public hearing on the matter. If the resolution is adopted, a jurisdiction's council or commission must send a copy of it to the property appraiser, the tax collector, and the Florida Department of Revenue by January 10 or, if the property appraiser, tax collector, and county all agree, March 10.

The adoption of a resolution of intent does not obligate a jurisdiction to use the method or to impose a special assessment, but is a prerequisite to using the Uniform Method.

The Initial Rate Resolution

Imposition of a stormwater assessment is typically effected through the adoption of two resolutions, the Initial Rate Resolution and the Final Rate Resolution. After the adoption of an enabling ordinance (which simply authorizes the jurisdiction to impose an assessment should it so elect, usually through home rule powers), a jurisdiction will decide whether to adopt an initial assessment resolution. The Initial Rate Resolution is not required, but is used to "benchmark" and "spread on the record" on decisions that are critical to the imposition of the assessment.

This Initial Resolution initiates the implementation process. It describes in great detail the stormwater special assessment program and the method of apportionment. It sets a public hearing date for final consideration; and it directs and authorizes the mailing of notices to the property owners included on the initial assessment roll, and the publishing of a notice of public hearing in a local newspaper. Among other things, the notice advises each property owner of:

- The pending assessment and what it is for
- The date, time, and place of the hearing to consider imposition of the assessment

- The fact that failure to pay may lead to foreclosure
- The number of billing units on the parcel, the proposed rate per billing unit, and the estimated amount to be assessed to that parcel should the rate be adopted

Upon adoption of the initial assessment resolution, a jurisdiction will have made the tentative decision to move forward with the imposition of special assessments to fund the stormwater budget.

Although the decision to move forward is not binding at this point, statutory time frames for notification and certification, and the logistics of implementation, leave a jurisdiction few alternatives after the subsequently required public hearing but to go forward with the assessments or choose to fund the stormwater budget through other revenue streams available to the jurisdiction.

The Assessment Roll

After adopting the necessary implementing documentation, a jurisdiction must develop a computerized, non-ad valorem assessment roll that contains the basis and rate of the assessment and applies them to each parcel subject to the assessment. From a practical standpoint, the non-ad valorem assessment roll should utilize the parcel identification number and property use code classifications maintained by the property appraiser; it must be compatible with the ad valorem tax roll. A critical task in the successful implementation of a non-ad valorem assessment program is verifying the integrity of the property use database utilized to develop the assessment rate structure and, ultimately, developing the non-ad valorem assessment roll on an annual basis.

The jurisdiction, not the property appraiser, must develop the non-ad valorem assessment roll. County property appraisers are charged with the responsibility of determining the value of all property within their county and maintaining certain records connected therewith, specifically preparing the ad valorem tax roll. The ad valorem tax roll is designed solely to provide the data required by property appraisers to determine property values. Under Section 197.3632, Florida Statutes, property appraisers must annually provide certain information to local governments by June 1 to assist a jurisdiction in the preparation of special assessment rolls to be collected under the Uniform Method. The information must conform to that contained on the ad valorem tax roll, but the property appraiser need not submit information that is not on the ad valorem tax roll. If a jurisdiction determines that the information supplied by the property appraiser is insufficient to develop its non-ad valorem assessment roll, a jurisdiction must obtain information from other sources. Obviously, the degree of cooperation received from the office of the property appraiser in including, updating, and consistently maintaining data relevant to property uses will have a direct effect on the quality and efficiency of the special assessment or non-ad valorem roll.

Accordingly, successful special assessment programs are those programs that employ, to the maximum extent possible, the information maintained by the property appraiser on the ad valorem tax roll. In addition, a special assessment program should be designed to maximize the local government's ability to electronically replicate and analyze the database on an annual basis, which in turn minimizes the amount of manual manipulation required of the special assessment roll.

The Final Rate Resolution and Certified Roll

Where the Uniform Method is employed, statutory requirements provide that a *service* assessment roll must be adopted at a public hearing between June 1 and September 15 (so the tax collector can merge it with the ad valorem tax roll, and mail a single bill for the combined collection of assessments and ad valorem taxes), and capital assessments may be imposed at any time. Capital assessments levied outside the tax roll billing timeframe must wait for collection until the annual tax bill is printed and mailed by the Tax Collector. Where the Uniform Method is not used, the jurisdiction may impose the assessment at any time.

At least 20 days prior to the public hearing, a jurisdiction must publish notice of the hearing in a newspaper of general circulation within the government's boundaries and by individual first class United States mail to the owners of property subject to the assessment. After the public hearing is properly convened and public input provided for, the jurisdiction may adopt a Final Rate Resolution that affirms the mechanics of assessment detailed in the Initial Rate Resolution and sets the final rate. The rate set in this hearing cannot be increased for any parcel over that noticed to the owner without re-noticing the owner. The rate may be lowered to any level without re-notice or the resolution may be voted down.

If the assessment is adopted and imposed, a certified roll must be delivered to the Tax Collector. This typically is done in electronic format (compatible with Tax Collector requirements) with certification by the Mayor, the Commission Chairman, or a delegated official identified in the Final Rate Resolution. Uniform Collection requires that the roll be certified by September 15 of the year in which the assessment is adopted. Jurisdictions not using the Uniform Collection method may send bills at any time.

Annual Roll Maintenance

Collection of special assessments and ad valorem taxes begins in November. Failure to pay the assessments and taxes results in the issuance of a tax certificate and may result in the sale of a tax deed.

If the special assessment will be collected for a period of more than one year or will be amortized over a number of years, a jurisdiction must so specify in the published and mailed notices and therefore is not required to annually adopt the assessment roll. However, for assessments whose rates vary among different types of property, the property owners must be notified annually if their assessment increases beyond the noticed amount for the prior year. Essentially, a jurisdiction is faced with the annual adoption of an assessment roll. (This roll is typically termed the "annual rate resolution" and incorporates elements of the initial and final rate resolutions adopted in the first year of the assessment program.) Annual notification of *all* property owners is the most efficient and effective approach to deal with re-notification required by property use or classification changes. This notification may be accomplished through the TRIM notice if the mandatory elements are provided for on the TRIM notice.

The stormwater assessment program proposed for implementation by a jurisdiction utilizes the ad valorem collection process provided in the Uniform Method, which requires the use of data available on the ad valorem tax roll. The ad valorem tax roll is designed solely to provide the data required by property appraisers to determine property values for ad valorem taxation purposes. The ad valorem tax roll preparation and date of assessment for each individual property is dictated by strict statutory timeframes. Section 192.042(1), Florida Statutes, requires real property to be assessed according to its "just value" on January 1 of each year, and requires improvements that are not substantially completed on January 1 be assigned no value. A jurisdiction, and not the Property Appraiser, must initially develop and then annually update and maintain the stormwater assessment roll.

A jurisdiction's proposed stormwater assessment program typically imposes assessments upon "developed" property only (developed can include anything short of land in a natural state). As a consequence, the timeframe required to post information to the stormwater assessment roll diverges from the posting of the same information to the ad valorem tax roll and requires supplementary actions by a jurisdiction. Therein lies a significant challenge for any local government using the Uniform Method to collect special assessments, which by their nature, are not value-based but rather are premised upon the benefit the special assessment program provides to affected properties.

The stormwater special assessment is typically imposed against all "developed" property within the stormwater service area each fiscal year. Each year the assessment will be collected through the annual ad valorem tax bill as a non-ad valorem assessment. Due to a data lag between the improvement of property and the inclusion of the improvement on the ad valorem tax roll, some properties, improved between January 1 and September 30, will not be shown as improved on the ad valorem tax roll for the upcoming fiscal year. These properties will have received a certificate of occupancy before the implementation of the stormwater assessment program and, therefore, may circumvent an assessment upon their receipt of a certificate of occupancy. Clearly, these improved properties will benefit from the provision of stormwater services, and a jurisdiction may wish to act to subject these newly improved properties to a supplemental assessment based upon their proportionate share of the costs of stormwater services for the upcoming fiscal year.

This omission should occur in the initial year of imposition only. In subsequent years, all newly improved property can be made to pay its fair share by the imposition of an interim special assessment that is imposed when the certificate of occupancy is issued.

The Supplemental or Interim Year Assessment Roll

To address this issue, a jurisdiction may consider the inclusion of this group of newly improved properties on a supplemental assessment roll for the upcoming fiscal year using the authorization of its enabling ordinance. A jurisdiction would assess newly improved properties the stormwater assessment amount that is attributable to their new improvement. The newly improved parcels would then be added to the ad

valorem tax roll for the following fiscal year by the property appraiser's normal procedures. Any unpaid assessments could be collected along with the subsequent year's special assessments on the tax bill.

This process could also be used in the event any improved parcels were omitted from the special assessment roll certified to the Tax Collector by September 15 of any given tax year.

The proposed stormwater special assessment is recurrent and intended to be imposed against all improved property in the stormwater service area each fiscal year. Each year the stormwater special assessment is to be collected through the annual ad valorem tax bill as a non-ad valorem special assessment. Those properties (both residential and non-residential) that are newly improved are not yet on the tax roll and, depending on their date of improvement, may not appear on the ad valorem tax roll for as many as 21 months from the time of improvement.

Using the authorization in its proposed ordinance, a jurisdiction should adopt procedures for collecting an assessment at the time of final inspection (e.g., certificate of occupancy). The assessment to be imposed would be formulated by a monthly base rate calculated at one-twelfth the annual assessment rate for each respective property category.

6.3.3 Failure to Pay the Assessment

For jurisdictions using the Uniform Collection Method, Florida law requires that all ad valorem taxes and the accompanying stormwater management assessments be paid at the same time. Like any assessment using this method, if an owner does not pay his or her property taxes and the stormwater management assessments, a lien will be placed against the property equal in rank and dignity with the liens of all state, county, and municipal taxes and special assessments. Delinquency triggers the tax certificate sale and, ultimately, tax foreclosure procedures stipulated by law. Under this law, payments of delinquencies of elderly persons are deferred until transfer of the elderly person's property where collection is made from proceeds of the sale.

For jurisdictions not using the Uniform Collection Method, payment is due as specified in the ordinance. Lien and foreclosure proceedings will be effected according to the local ordinance.

6.3.4 Homestead Exemptions and The Assessment

Often the question is raised whether those with a valid homestead exemption are subject to the assessment. Under Florida law, special assessments are different from property taxes; the stormwater management special assessment applies to all residential property uses regardless of homestead exemption. Only those properties clearly exempted by the special assessment ordinance and/or rate resolution do not have to pay the assessment.

6.3.5 Periodic Payments and Discounts

Many property owners pay monthly mortgage payments. Typically, the mortgage holder escrows the assessment amount, much like property taxes; the monthly mortgage payment will include payment of outstanding assessments as well as property taxes. Under the Uniform Method, all payment options available to ad valorem payments are available to the payment of assessments. Since quarterly payment of taxes is provided for by statutes governing payment of property taxes, the same quarterly provisions must be made available to payment of assessments where the uniform Collection Method is employed. This payment option is provided through the Tax Collector's office.

The same discounts and penalties applicable to ad valorem taxes also apply to special assessments collected on the tax bill. Statutes provide for a 4% discount for taxes and assessments paid in December, with the discount dropping one percentage point each month until March 31. Assessments not paid by April 30 are deemed delinquent.

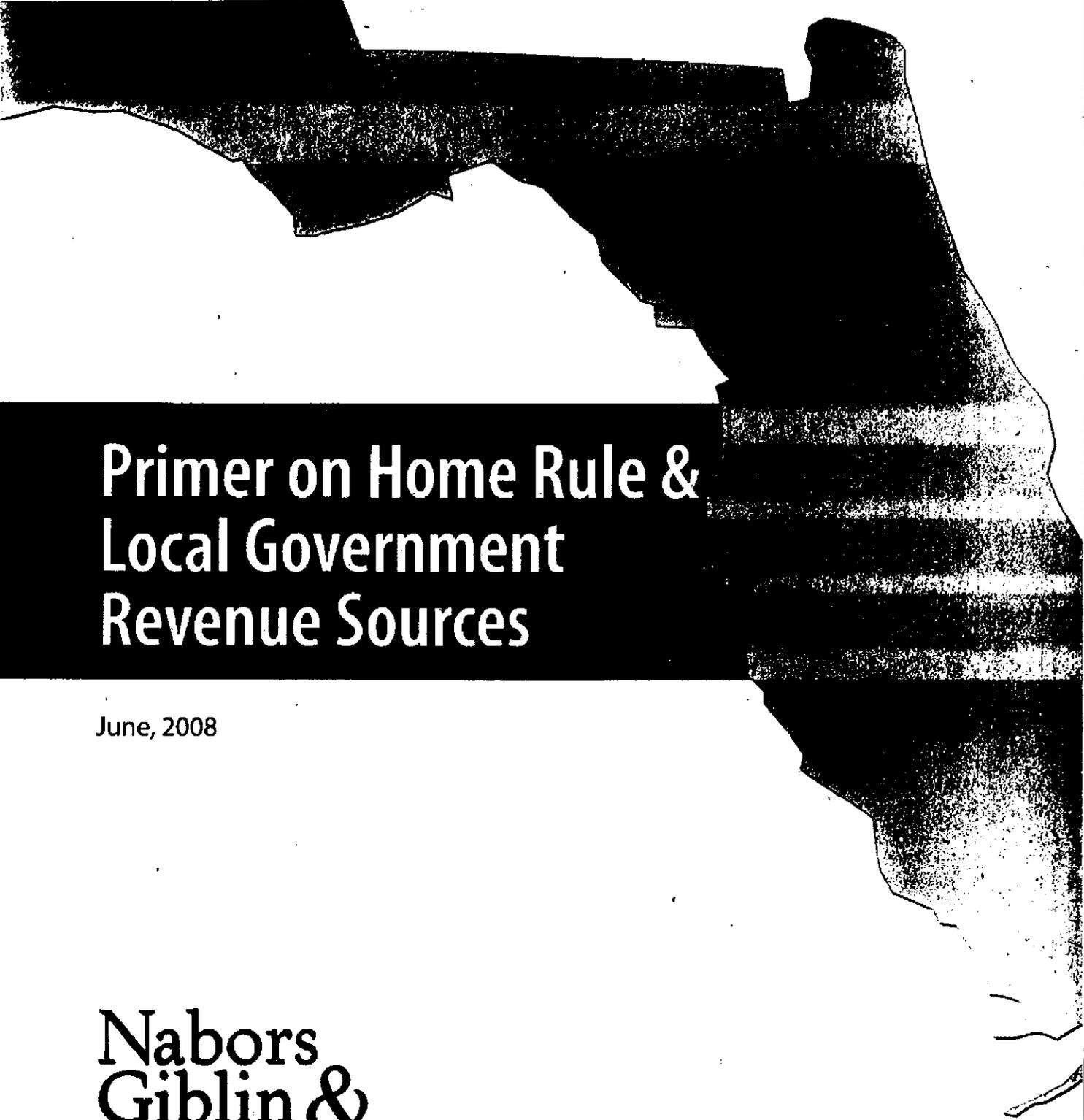
6.3.6 Use Of Tax Certificates

Assessments levied using the property tax bill collection method are treated for collection purposes just as ad valorem (property) taxes. This means that, just like property taxes, property owners who do not pay their special assessments could lose title to their property either through foreclosure or tax deed sale. Prior to foreclosure, taxes and assessments due on delinquent properties are auctioned to creditors at a

tax certificate sale. These creditors, typically local citizens and small, specialty investment companies, bid to pay the taxes due and hold a note from the property owner at the bid interest rate for the amount due.

The property owner has two years to satisfy the note at the bid interest rate. The jurisdiction gets the arrears revenues in a timely manner without the cost of foreclosure. The certificate holder has a note subordinate to none against the property, and receives certain title advantages should foreclosure ultimately be required. By using the tax bill collection method for the sale of tax certificates before properties can be foreclosed or sold at tax sale, the delinquent property owner will receive up to a two-year grace period and avoid costly traditional foreclosure proceedings.

~~PREVIOUS~~ | ~~MENU~~ | ~~NEXT~~



Primer on Home Rule & Local Government Revenue Sources

June, 2008

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5.03. Franchise and Right-of-way Rental Fees.

A franchise fee is a charge imposed upon a utility for the grant of a franchise and for the privilege of using the local government's rights-of-way to conduct the utility business. A franchise fee is fair rent for the use of such rights-of-way and consideration for the local government agreeing not to provide competing utility services during the franchise term. See City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976); Santa Rosa County v. Gulf Power Co., 635 So. 2d 96 (Fla. 1st DCA 1994), rev. denied, 645 So. 2d 452 (Fla. 1994); and City of Hialeah Gardens v. Dade County, 348 So. 2d 1174 (Fla. 3d DCA 1977).

By definition, a franchise ordinance grants a special privilege that is not available to the general public. The Florida Supreme Court explained in Leonard v. Baylen Street Wharf Co., 52 So. 718 (Fla. 1910), that "[a] franchise is a special privilege conferred upon individuals or corporations by governmental authority to do something that cannot be done of common right." Id. at 718. However, "[f]ranchises [are] not . . . the absolute property of any one, but their use may be granted or permitted by proper governmental authority, subject to supervision and regulation, and upon such terms as may be lawfully imposed." Id. Franchises are used for "the good of the public, usually for the purpose of rendering an adequate service without unjust discrimination, and for a reasonable compensation." Id. Finally, "[p]rivate rights in franchises are confined to a proper use of them for the general welfare, subject to lawful governmental regulation." Id.

In addition to compensation for the relinquishment of property rights, when counties and municipalities have the authority to own, operate, and maintain utilities themselves any permission granted to another entity to perform those services is additional justification for the fee. See *Alpert v. Boise Water Corp.*, 795 P. 2d 298 (Idaho 1990). In *Alpert*, each franchise provided that the utility would pay to the cities a three percent (3%) franchise fee from all sales within the corporate limits as "consideration for the franchise contract." *Id.* at 300. The Idaho Supreme Court stated, "[C]ities have the right to own and operate utilities and provide those services to their residents[.] [T]he surrender of this right is valid consideration for the franchise fee charged to the utilities." *Id.* at 306.

The home rule authority of a county or municipality to enter into a franchise agreement with a utility and to impose a fee that is bargained for in exchange for the government property rights relinquished is settled. An evolving issue is the extent of the power of a county or municipality to unilaterally impose a fee for a privileged use of its right-of-way whether such charge is characterized as a rental fee, a regulatory fee or both.

Customarily, a franchise fee is calculated as a percentage of the gross revenues received by a utility from a defined geographic area. A franchise fee imposed by a municipality is based upon the gross revenues received by the utility from the municipal areas and a franchise fee imposed by a county is generally based upon the gross revenues received by the utility from the unincorporated areas (whether a franchise fee imposed by a county could be based on gross receipts received by the utility countywide has not been addressed.)

In *Alachua County v. State*, because the electric utilities would not consent to a franchise agreement, Alachua County unilaterally imposed a fee for the privileged use of its rights-of-way. The fee imposed was three percent (3%) of the gross revenues generated by the electric utilities and the utilities were allowed to separately state the fee on the electric bill. The record in the validation proceedings did not, in the words of the Court, establish any "nexus between its alleged 'reasonable rental charge' . . . and

the rental value of the rights-of-way." Id. at 1067-68. As a consequence, the Court held that the unilaterally imposed privilege fee was a tax not authorized by general law.

The Alachua County case was distinguished by the Court in Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237 (Fla. 2004). There, the electric utility refused to renegotiate a franchise agreement which had previously provided for the payment of a franchise fee of six percent (6%) of the gross revenues received from the sale of electricity within the City of Winter Park. The Court likened the electric utility to a holdover tenant in the public rights-of-way and held that the electric utility would be subject to the six percent fee until the parties reached a new agreement or the City exercised its rights to acquire granted under the franchise agreement. The Court distinguished its prior holding in Alachua County as follows:

Moreover, we reiterate that Alachua validates fees that are reasonably related to the government's cost of regulation or the rental value of the occupied land, as well as those that are the result of a bargained-for exchange. [cit. omitted] In the instant case, the trial court specifically found that the City had "offer[ed] sufficient evidence that the six percent fee was reasonably related" to the costs of regulation, and had "also presented strong evidence that the six percent fee is a fair 'market rate' for such use, occupation, or rental."

887 So. 2d at 1241.

In summary, a bargained for reasonable fee in a franchise agreement is not a tax. The fact that the franchise agreement has expired does not render the charge a tax and it remains a valid fee until a new agreement is reached or any contractually granted acquisition rights are exercised. Additionally, a unilaterally imposed fee reasonably related to the cost of regulation and constituting a reasonable rental charge for the use of public property is a valid fee.

5.04. Impact Fees.

Impact fees are charges imposed against new development to provide for the cost of capital facilities made necessary by that growth. The purpose of the charge is to impose upon the newcomers, rather than the general public, the cost of new facilities