

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 16-02 Local Government Capital Recovery

**SPONSOR(S):** Finance & Tax Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Pewitt	Langston

### SUMMARY ANALYSIS

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to local government capital recovery.

The bill provides a specified list of local government revenue sources, including abatement fines, administrative fines, property fines, and utility charges. These revenue sources are collectively referred to as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county's or municipality's procurement policy.

The bill provides that, after October 1, 2016, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The criteria are:

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least \$5,000,000; or
- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least \$1,000,000

The county or municipality must seek bids from licensed collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county's or municipality's delinquent designated revenues as of the date the invitation to bid is issued.

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

All counties and municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill may require some additional local government expenditures related to issuance of procurement requests. The bill might also improve certain local government revenue collections.

The bill takes effect July 1, 2016.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcb02.FTC

**DATE:** 10/30/2015

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### County & Municipal Code Enforcement & Other Fees & Fines

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.<sup>1</sup> However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct county or municipal government, perform its functions and provide services, and exercise any power for county or municipal purposes, except as otherwise provided by law.<sup>2</sup> Non-charter county governments are granted powers of self-government pursuant to general or special law,<sup>3</sup> and charter counties are granted all powers of self-government which do not conflict with general or special law.<sup>4</sup> Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida statutes that authorize specific types of fees.

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, Florida Statutes, outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce county or municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.<sup>5</sup> Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.<sup>6</sup> However the statute states that local governments are not prevented by statute from enforcing codes and ordinances by any other means.<sup>7</sup>

##### County and Municipally Owned Utilities

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."<sup>8</sup> Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.<sup>9</sup> With respect to public works projects, including water and sewer utility services,<sup>10</sup> municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public

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<sup>1</sup> FLA. CONST. art VII, s. 1(a) and 9(a).

<sup>2</sup> FLA. CONST. art VIII, 2(b). *See also* s. 166.021, F.S.

<sup>3</sup> FLA. CONST. art VIII, 1(f). *See also* chapter 125, F.S.

<sup>4</sup> FLA. CONST. art VIII, 1(g).

<sup>5</sup> Section 162.21, F.S.

<sup>6</sup> Section 162.09, F.S.

<sup>7</sup> Section. 162.21, F.S.

<sup>8</sup> Art. VII, s. 10(d), Fla. Const. *See ss.* 361.10-361.18, F.S.

<sup>9</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).

<sup>10</sup> S. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

health, safety and welfare” to accomplish the purposes of ch. 180, F.S.<sup>11</sup> Current law requires municipalities providing telecommunication services to abide by certain requirements.<sup>12</sup> Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).<sup>13</sup> PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.<sup>14</sup> PSC regulation of municipal natural gas utilities is limited to territorial issues.<sup>15</sup> Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.<sup>16</sup>

Counties are authorized by statute to purchase, construct, maintain, and manage water supply and sewage systems.<sup>17</sup> They are allowed to issue a variety of bonds to finance the construction of such systems,<sup>18</sup> and may create water and sewer districts in unincorporated areas of the county.<sup>19</sup> Additionally, counties may operate telecommunications services.<sup>20</sup>

### Uncollected Fees & Fines

Many fees and fines imposed by counties and municipalities are difficult to collect in a timely manner. However, because counties and municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a county or municipality can have a large balance of uncollected fees and fines. In a survey of large cities in Florida performed by a private company in 2013, seven cities reported a total of \$421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens.

### Collection Agencies

Counties and municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.<sup>21</sup> When done on a contingency basis, fees paid to the collection agency may not exceed 40% of the amount originally owed to the county or municipality.

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.<sup>22</sup> As of June 30, 2015 there were 1,365 registered collection agencies in Florida.<sup>23</sup>

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act<sup>24</sup> and the Florida Consumer Collection Practices Act.<sup>25</sup> Both acts define “debt collector” narrowly, and exclude

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<sup>11</sup> S. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. S. 180.19, F.S.

<sup>12</sup> See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

<sup>13</sup> See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

<sup>14</sup> Ss. 366.04(2), (5), and (6), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/17/2015).

<sup>15</sup> S. 366.04(3), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/17/2015).

<sup>16</sup> S. 367.022(2), F.S.

<sup>17</sup> Section 153.03, F.S.

<sup>18</sup> Chapter 153, F.S., multiple sections.

<sup>19</sup> Part II., Chapter 153.F.S.

<sup>20</sup> Section 125.421, F.S.

<sup>21</sup> Section 938.35, F.S.

<sup>22</sup> Section 559.555, F.S.

<sup>23</sup> Telephone conversation with OFR (October 29, 2015).

persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney's fees and costs.

### Annual Financial Audit Report

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.<sup>26</sup> The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.<sup>27</sup> AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and is useful for detailed financial analysis.

### Proposed Changes

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to county and municipal capital recovery, respectively. The bill provides a specified list of local government revenue sources, including:

- Abatement fines, which are amounts billed to an owner of real property by a county or municipality to recover funds expended by the county or municipality to bring the property into compliance with county or municipal ordinance by taking some action at the property;
- Administrative fines, which are amounts other than abatement or property fines billed to an individual for the violation of a county or municipal ordinance or code unrelated to real property;
- Property fines, which are amounts other than abatement fines which are billed to a property owner due to the property being out of compliance with an ordinance or code; and
- Utility charges, which are amounts billed to a customer, other than a governmental entity, by a government-owned utility for providing utility service.

These revenue sources are collectively referred to as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county's or municipality's procurement policy.

The bill provides that, after October 1, 2015, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The county or municipality must seek bids from licensed collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county's or municipality's delinquent designated revenues as of the date the procurement request is issued. The criteria are:

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least \$5,000,000; or

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<sup>24</sup> 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

<sup>25</sup> Part VI of Chapter 559, F.S.

<sup>26</sup> Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

<sup>27</sup> Sections 218.32(1)(d)-(e), F.S.

- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least \$1,000,000

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

Any county or municipality issuing a procurement request pursuant to this section is required to file a copy of all responses to the procurement request with the Department of Financial Services, which must maintain a copy of all such bids for a period of at least 5 years.

All municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill takes effect July 1, 2016.

#### B. SECTION DIRECTORY:

Section 1: Creates section 125.575, F.S., specifying the requirements for county capital recovery.

Section 2: Creates section 166.30, F.S., specifying the requirements for municipal capital recovery.

Section 3: Amends section 218.39, F.S. to require a discussion of county or municipal capital recovery as part of the management letter accompanying the annual financial auditing report.

Section 4: Provides an effective date.

## 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:

See FISCAL COMMENTS below.

2. Expenditures:

The bill may, in certain circumstances, require an expenditure of funds by a county or municipality to issue a procurement request.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may result in improved revenue collections if it encourages additional local government revenue collection efforts.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities, in some circumstances, to issue a procurement request, which may require the expenditure of funds; however, an exemption may apply, as the expenditure of funds to issue an invitation to bid is most likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES