

Chapter XVII

Financing Local Government

I. LOCAL GOVERNMENT MAJOR REVENUE SOURCES

In Florida, local government revenues are derived from three sources: (1) taxes imposed by the counties, (2) non-tax charges imposed by local government, and (2) other governmental (e.g., state and federal) revenues that are shared, directly imposed on behalf of, or given to local government. The Florida Constitution prescribes a local government's ability to generate these first two revenue sources. The Constitution authorizes the levy of ad valorem (value-based) taxes on real and tangible personal property and pre-empts the local government's ability to levy other taxes (e.g., sales, gas, tourist, utility) to the State of Florida. Non-tax revenues (e.g., user fees, impact fees, special assessments) may be imposed by county or municipal ordinance, without state legislative authority.

The examination of the major revenue sources for Florida's local governments is not complete unless one remembers that Florida has granted its counties and municipalities strong home rule powers. These home rule powers are different for charter and non-charter counties and for municipalities, but the powers of home rule are extended to all three. These powers include the ability to locally craft revenue solutions, absent conflict with general or special laws and the constitution. Accordingly, the analysis is often not whether the Legislature has granted counties or municipalities the power to do something but whether the Legislature has taken away power.

The three main categories of revenue sources for Florida's local governments are as follows:

Taxes

- Ad valorem property taxes
- Local option sales taxes
- Local motor fuel taxes
- Communications services taxes
- Public service taxes (municipalities and charter counties)
- Tourist development taxes
- Miscellaneous taxes
 - ◆ Intergovernmental radio communication and automation surcharge
 - ◆ Local occupational license taxes
 - ◆ Hazardous waste tax
 - ◆ Green utility (counties over 500,000 in population)

Non-tax Sources. Counties and municipalities may also impose non-tax revenue sources within their jurisdiction:

- Fees

- ◆ User fees and service charges
- ◆ Impact fees
- ◆ Franchise fees
- ◆ Utility fees
- ◆ Regulatory fees
- Non-ad valorem special assessments
 - ◆ Fire
 - ◆ Fire and first response rescue
 - ◆ Solid waste collection and disposal
 - ◆ Stormwater facilities and services

Other local government sources of revenue

- State revenue sharing
- Half-cent sales tax program
- Pari-mutuel revenue
- State housing initiatives partnership (“SHIP”)
- Miscellaneous
 - ◆ Emergency management assistance
 - ◆ Beverage licenses
 - ◆ Insurance licenses
 - ◆ Mobile home license
 - ◆ Motorboat fees
 - ◆ Oil & gas tax
 - ◆ Solid minerals severance tax

Each of these categories will be explained throughout the remainder of these materials.

A. Taxation

1. Limitations and Authority

a. Article VII, section 1(a), Florida Constitution, provides as follows:

No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

In *Alachua County v. Adams*, 736 So. 2d 1220 (Fla. 1997), the Supreme Court found that a special act allowing Alachua County to use the proceeds of the infrastructure sales surtax for a use that conflicted with the general law authorization for the tax violated Article VII, section 1 and Article VII, section 9, Florida Constitution.

b. Article VII, section 9(a), Florida Constitution, provides as follows:

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

2. Ad Valorem Taxes

a. Article VII, section 9(b), Florida Constitution, provides as follows:

Ad valorem taxes, exclusive of taxes levied for period not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, 10 mills; for all municipal purposes, 10 mills; for all school purposes, 10 mills; . . . and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

b. Article VII, section 4, Florida Constitution, provides for just valuation of all property for ad valorem taxation purposes and a limitation on the amount of increase of assessment.

c. Section 200.071, Florida Statutes, provides statutory millage limitations for counties and special districts:

1. Except as otherwise provided herein, no ad valorem tax millage shall be levied against real property and tangible personal property by counties in excess of 10 mills, except for voted levies.

2. The board of county commissioners shall, in the event the sum of the proposed millage for the county and dependent districts therein is more than the maximum allowed hereunder, reduce the millage to be levied for county officers, departments, divisions, commissions, authorities, and dependent special districts so as not to exceed the maximum millage provided under this section or s. 200.091.

3. Any county which, through a municipal service taxing unit, provides services or facilities of the kind or type commonly provided by municipalities, may levy, in addition to the millages otherwise provided in this section, against real property and tangible personal property within each such municipal service taxing unit an ad valorem tax

millage not in excess of 10 mills to pay for such services or facilities provided with the funds obtained through such levy within such municipal service taxing unit.

d. See Board of County Comm'rs, Hernando County v. Florida Dep't of Community Affairs, 626 So. 2d 1330 (Fla. 1993)(upholding the aggregation of dependent district millage with the county purpose millage).

e. Section 166.211, Florida Statutes, provides authority to levy ad valorem taxes, consistent with the constitutional provision set forth above. Section 200.081, Florida Statutes, provides the statutory millage limitation for municipalities, "No municipality shall levy ad valorem taxes against real property and tangible personal property in excess of 10 mills, except for voted levies." Id.

f. A county may also levy taxes up to 10 mills for municipal purposes without voter approval under Article VII, sec. 9(b), Florida Constitution and section 125.01(1)(q), Florida Statutes.

g. The Florida Constitution requires assessment at full market value, but see "Save Our Homes" constitutional amendment which "caps" residential assessments of homestead property until transfer occurs. See Walter v. Schuler, 176 So. 2d 81 (Fla. 1965); see also Fuchs v. Robbins, 738 So. 2d 338 (Fla. 3d DCA 1999)(holding sec. 192.042 unconstitutional), rev'd on other grounds, Fuchs v. Robbins, 818 So. 2d 460 (Fla. 2002); Sunset Harbour Condominium Ass'n v. Robbins, 837 So. 2d 1181 (Fla. 3d DCA 2003), rev. granted, May 3, 2003 (Fla. Sup. Ct.).

h. Section 193.011, Florida Statutes, prescribes the criteria to be addressed when assessing property. See Valencia v. Bystrom, 543 So. 2d 214 (Fla. 1989); see also Wal-Mart Stores, Inc. v. Mazourek, 778 So. 2d 346 (Fla. 5th DCA 2000), rehearing denied, review granted, 797 So. 2d 586 (Fla. 2001), quashed, 832 So. 2d 85 (Fla. 2002) (holding that although the property appraiser must consider all of the statutory factors for just valuation for ad valorem taxation, he may discard entirely any that are not probative of fair market value under the circumstances); Havill v. Lake Port Properties, Etc., Inc., 7290 So. 2d 467 (Fla. 5th DCA 1999).

i. Property subject to taxation.

1. All real and personal property in the state and all personal property belonging to persons residing in the state. See section 196.001(1), Florida Statutes.

2. All leasehold interests in property of the U.S., state, or local government agencies. See section 196.001(2), Florida Statutes.

j. Ad valorem taxes defined. A tax based upon the assessed value of property. Section 192.001(1), Florida Statutes. Ad valorem tax roll is prepared by the property appraiser and certified to the tax collector. Section 197.102(7)(a), Florida Statutes. Ad valorem taxes consist of:

1. Tangible personal property. All goods, chattels and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself. It includes fixtures, machinery, and equipment, but not inventory, household goods or vehicles. Section 192.001(11)(d), Florida Statutes.

2. Real property. Land, buildings, fixtures, and all other improvements to land. Section 192.001(12), Florida Statutes.

k. Referendum Required – Debt. Any pledge of ad valorem taxes for debt that matures more than 12 months after issuance must be approved by vote of the electors. See Art. VII, sec. 12, Fla. Const.

l. Uniformity of Tax Rate. The rate of ad valorem taxes must be uniform throughout a taxing unit. Accordingly, a local government cannot levy an extra one mill of ad valorem tax on only commercial property for a specified purpose. The tax rate must be the same across all property use categories and, as a general matter, throughout the local government.

m. Just Value. All property must be assessed at “just value” for purposes of ad valorem taxes. “Just value” has been defined by the courts to mean fair market value which is that price a willing buyer would pay to a willing seller, each acting without compulsion to either buy or sell.

n. Public Purpose. Ad valorem taxes can only be used for valid public purposes and only when any private benefit or gain is incidental to the primary public purpose. The revenue derived from ad valorem taxes may be used for general governmental functions – those functions that make and sustain an organized, civilized society without regard to use, benefit, or burden.

o. Municipal Real and Substantial Benefit. The services and facilities funded by a county with ad valorem taxes must provide a real and substantial benefit to municipal areas within a county. See Art. VIII, sec. 1(h), sec. 125.01(7), Fla. Stat.; see also, City of St. Petersburg v. Briley, Wilde & Associates, Inc., 239 So. 2d 817 (Fla. 1970); Town of Palm Beach v. Palm Beach County, 460 So. 2d 879 (Fla. 1984).

p. Exemptions. The Legislature is without authority to grant exemptions from ad valorem taxes when there is no constitutional basis for the exemption. See Sebring Airport Authority v. McIntyre, 783 So. 2d 238 (Fla. 2001).

1. Homestead Exemptions: The Florida Constitution authorizes and the Florida Legislature implemented a tax exemption on homestead property that the first \$25,000 of assessed value of homestead property is not subject to taxation. (Art. VII, sec. 6)

2. “Save Our Homes”: This constitutional amendment limits the annual increase in the assessed value of homestead property to the annual change in the Consumer Price Index, or three percent, whichever is smaller. (Art. VII, sec. 4)

3. “Save Our Seniors”: Counties may, by ordinance, enact an additional \$25,000 homestead exemption to property owners aged 65 and older that have a household income of \$20,000 or less (may be adjusted for inflation).

4. “Granny Flats”: Counties may, by ordinance, grant an additional exemption for additions or improvements to homestead property that is built to provide primary living quarters for parents or grandparents, over the age of 62, of the property owner (or owner’s spouse). The exemption applies only to those improvements that have been made after January 7, 2003, but is equal in amount to the increase in the assessed value resulting from the construction or 20 percent of the total assessed value of the property as improved, whichever is less.

5. Immune property: property owned by the federal government, the State of Florida and its counties. See The First Nat’l Bank of Homestead, Florida v. Dickinson, 291 F. Supp. 855 (N.D. Fla. 1968), *aff’d*, 393 U.S. 409, 89 S. Ct. 685, 21 L. Ed. 2d 634 (1969); Park ‘n Shop, Inc. v. Sparkman, 99 So. 2d 571 (Fla. 1957). In Canaveral Port Authority v. Dep’t of Revenue, 690 So. 2d 1226 (Fla. 1996), the court held port authority was not the state or subdivision for purpose of exemption contained in constitution; therefore, port authority immunity from ad valorem taxation did not extend to property leased to nongovernmental entity for nongovernmental use.

6. Exempt property: property owned by municipalities when used for public purposes is exempt from ad valorem taxes as is property that is used predominantly for educational, literary, scientific, religious or charitable purposes. No exemption may be granted by either the Legislature or the counties that is not authorized by the Constitution. See Art. VII, section 3(a), Fla. Const., Ch. 196, Fla. Stat.; Orange State Oil Co. v. Amos, 130 So. 707 (Fla. 1930); Leon County Educational Facilities Authority v. Hartsfield, 698 So. 2d 526 (Fla. 1997); Schultz v. Crystal River Three Participants, 686 So. 2d 1391 (Fla. 5th DCA 1997) (holding that fee simple interest of municipalities in power plant are exempt from taxation even though private electric corporation owned controlling interest to the extent that cities’ interests were being used for the generation of electricity, a public purpose was being served and municipalities entitled to exemption).

B. Local Government Taxes Authorized by the Legislature

1. Local Option Sales Taxes. The Legislature has authorized six local option sales taxes to counties, but some of them are restricted to certain types of counties. See Ch. 212, Part I, Fla. Stat. (providing for local option sales tax on first \$5,000 of the purchase price of tangible goods).

a. Local Government Infrastructure Sales Surtax: may be levied countywide, with referendum approval, by the governing board of the county or the governing bodies of municipalities representing a majority of the county population. The tax is limited to either a half-cent or a fully penny to generally finance, plan and construct infrastructure. See sec. 212.055(2), Fla. Stat. (are some special uses for small counties and areas of critical state concern); see also Alachua County v. Adams, 736 So. 2d 1220 (Fla. 1997)(holding that

enactment of a special act which prescribes uses of the infrastructure sales surtax which conflicted with general law was unconstitutional). The tax must be shared between the county and the municipality and may be shared with the school board.

b. Indigent Care and Trauma Center Surtax: counties with populations above 800,000, except for consolidated counties (Duval) and counties authorized to levy a County Public Hospital Surtax (Miami-Dade), may levy a one-half percent local sales tax to fund indigent health care and trauma center care. See sec. 212.055(4), Fla. Stat.

c. County Public Hospital Surtax: Miami-Dade County authority; see sec. 212.055(5), Fla. Stat.

d. Charter County Transit System Surtax: each county with a charter before January 1, 1984, each county whose government is consolidated with one or more municipalities, and each county as defined in section 125.011(1), Florida Statutes, may levy up to one percent for the development, construction, equipment, maintenance, operation, and support of transit; see sec. 212.055(1), Fla. Stat.

e. Small County Surtax: small counties, with a population of 50,000 or less on April 1, 1992, may levy a one-half or whole penny for either capital or operational costs; see sec. 212.055(3), Fla. Stat.

f. Voter-Approved Indigent Care Surtax: counties with a population over 800,000 may levy a sales surtax to fund indigent care; see sec. 212.055(7), Fla. Stat.

2. Local Motor Fuel Taxes. As a general rule, motor fuel taxes must be used for transportation expenditures as defined by statute.

a. Constitutional Gas Tax. Article XII, section 9(c), Florida Constitution, provides for a two cent per gallon tax on motor fuel. See also secs. 206.41, 206.47, Fla. Stat.

b. County Gas Tax. One cent a gallon tax to counties. See sec. 106.90, Fla. Stat.

c. Municipal Gas Tax. One cent a gallon tax to municipalities. See sec. 206.605, Fla. Stat.

d. Local Option Motor Fuel Taxes. There are various local option gas taxes which may be imposed up to 12 cents a gallon. See sec. 336.021(1)(a), Fla. Stat. (“Original Six Cents”), sec. 336.025(1)(b), Fla. Stat. (“ELMS Five Cents”), and sec. 336.021, Fla. Stat. (“Ninth Cent”). All of these local options except for the Ninth Cent must be shared between the county and the municipalities within the county.

3. Communication Services Tax: Chapter 202, Florida Statutes. The Communications Services Tax (“CST”) is a tax on communications services.

a. The tax base includes local land-line and long distance telephone services, mobile communications services, and cable television services. The tax base does not include

internet access and information services. Satellite services are also not subject to the CST; they are subject to a tax levied by the state, a portion of which is distributed to local governments in proportion to their participation in the Half-Cent Sales Tax Program.

b. The CST may be used for any public purpose, including the pledging or repayment of debt.

c. Charter counties and municipalities may levy the CST up to a rate of 5.1 percent; non-charter counties up to 1.6 percent. The rate may be increased by a decision not to charge permit fees for right-of-way use by dealers of communications services. For charter counties and municipalities, the additional CST rate available is 0.12 percent and for non-charter counties, 0.24 percent.

d. With one exception, Chapter 202, Florida Statutes, preempts the ability to levy taxes and impose charges on communication service providers. The one exception is for “pass-through providers.” These dealers may be charged up to \$500 per linear mile for use of the rights-of-way. A “pass-through provider” is a company that puts a communications facility in the right-of-way but which does not pay the CST to that municipality or county.

4. Public Service Tax. Sections 166.231 and 166.232, Florida Statutes, provide for a municipal public service tax on the purchase of electricity, metered or bottled gas, and water. Charter counties have authority to assess public service tax in unincorporated area. See McLeod v. Orange County 645 So. 2d 411 (Fla. 1994); see also City of Tampa v. Thatcher Glass Corp., 445 So. 2d 578 (Fla. 1984)(holding that exemption for fuel adjustment charge applied to natural gas as commodity).

5. Tourist Development Tax. Section 125.0104, Florida Statutes, authorizes and outlines procedures for collection of a tourist development tax by counties. Use of tourist development tax proceeds is limited by state law and may be further limited by local ordinances.

6. Occupational License Tax.

a. Chapter 205, Florida Statutes, provides for taxation of occupations and businesses located within local jurisdictions and establishing procedures and parameters for imposing the tax.

b. In City of Hallandale v. Miami Herald Publishing Co., 637 So. 2d 929 (Fla. 4th DCA 1994), the court held that city ordinance imposing flat annual license tax on newspaper vending machine violated First Amendment.

7. Miscellaneous Tax Sources

a. Convention Development Tax (Miami-Dade, Duval and Volusia Counties): sec. 212.0305, Fla. Stat.

- Stat.
- b. Miami-Dade County Local Option Food & Beverage Tax: 212.0306, Fla. Stat.
 - c. “911” Fee and “E911” Fee: sec. 365.171, et seq., Fla. Stat.
 - d. Intergovernmental Radio Communication and Automation Surcharge: sec. 318.21(9), Fla. Stat.
 - e. Hazardous Waste Tax: sec. 403.725, Fla. Stat.
 - f. Miami-Dade County Documentary Stamp Tax: sec. 201.031, Fla. Stat.; see also Thomas v. Dep’t. of Revenue, 466 So. 2d 1069 (Fla. 1985).
 - g. Municipal Pari-Mutuel Tax: sec. 550.105(9), Fla. Stat.
 - h. Green Utility: sec. 369.255, Fla. Stat.
 - i. School Crossing Guard Surcharge: sec. 318.21(11), Fla. Stat.
 - j. Driver Education Surcharge: sec. 318.1215, Fla. Stat.
 - k. Educational Facilities Benefit District: sec. 1013.356, Fla. Stat.

C. Non-Tax Revenues

In addition to locally-imposed taxes and in addition to revenues that the State shares with local governments, counties and cities have the home rule and statutory authority to impose other revenue sources. Generally, these revenue sources are dedicated in their purpose and are tied, in amount, to the cost of providing the service or facility. While statutory authority may exist for some of them, they are all imposed at the local level, typically through an ordinance.

There are two basic categories of these revenue sources: non-ad valorem special assessments and fees. Special assessments and fees provide diversity to a local government’s financial portfolio and they are sound revenue sources for dedicated purposes. In addition, the special assessment can be charged on the annual property tax bill which guarantees an exceptionally high rate of collection. For this reason, the special assessment is a good revenue source to use for pledging against debt and being able to build infrastructure. Furthermore, the special assessment can be used to fund certain key services that local governments provide: fire suppression, solid waste collection, and stormwater. However, again because of certain case law decisions and lack of statutory authority, other critical services are not eligible (e.g., emergency medical services).

Whether a fee, assessment or charge authorized only by local government ordinance, and not general law, is constitutionally permissible depends on the Florida case law requirements. This analysis is difficult, however, because various requirements exist for the different types of constitutionally valid fees.

1. Fees.

a. General

1. Local governments possess broad home rule authority to impose many types of user, service and regulatory fees.

2. Local governments generally impose fees in one of two ways: (1) fees imposed in the assertion of the proprietary power of local government; imposed in exchange for a right, service, or privilege (e.g., rental fees, admission fees, recreation fees, and franchise fees), (2) fees imposed under the police power of local government in the exercise of a sovereign function of the local government; (e.g., fees to fund the cost of regulatory activities like building permit fees, planning and zoning fees, inspection fees, impact fees).

3. In State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994), the court struck a transportation utility fee, holding that it was an illegal tax not authorized by general law. The City of Port Orange case defined fees by stating that

- user fees are charged for using a particular service provided by the local government.
- the party paying the fee is benefiting from the service in a manner not shared with other members of the community.
- the party paying the fee has the choice of not using the service provided and thereby avoiding the fee.

4. In State v. City of Gainesville, 863 So. 2d 138 (Fla. 2003), court upheld the City's stormwater utility fee, even against a challenge from the State Dep't. of Revenue, and softened the voluntary requirement when statutory authority exists for the imposition of a fee by noting that where a statute authorizes a utility fee, such fees may be considered user fees even though mandatory; see also, Pinellas County v. State, 776 So. 2d 262 (Fla. 2001); but see Collier County v. State, 733 So. 2d 1012 (Fla. 1999)(striking an interim service fee imposed on new growth for the operation and maintenance of certain growth sensitive services).

b. Utility Fees.

1. In City of Riviera Beach v. Martinique 2 Owners' Assn'n Inc., 596 So. 2d 1196 (Fla. 4th DCA 1992), the court held that rate making for utilities is a legislative function. See also City of New Smyrna Beach v. Fesh, 384 So. 2d 1272 (Fla. 1980).

2. In Pompano Beach v. Oltman, 389 So. 2d 283 (Fla. 4th DCA 1980), rev. denied, 412 So. 2d 469 (Fla. 1982), the court ruled that utility rates must be reasonable and non-discriminatory but that a municipality was entitled to make a profit from its utility operations and to use the proceeds thus derived for other valid municipal purposes.

c. Service and User Fees.

1. Garbage. See St. Lucie County v. City of Fort Pierce, 676 So. 2d 35 (Fla. 4th DCA 1996)(holding that tipping fees paid by municipality could be used to fund the costs of the closure of an old landfill).

2. Prisoner reimbursement. See Williams v. Engle, (Fla. 5th DCA 1997)(noting that fee could be charged against prisoner's account for dental treatment and cost of meals and upheld fee for medical cost for pretrial detainees held county jail); Ilkanic v. City of Fort Lauderdale, (Fla. 1998)(upholding statute imposing per diem charge against prisoner for cost of incarceration).

d. Franchise Fees.

1. Vendor cart permit holders could be charged a fee to use the public rights-of-way to operate their business; the revenue derived from the fee was not subject to the restrictions of regulatory fees (i.e., that the amount of the fee should be tailored to the cost of regulation and that the proceeds must be used for the purpose the fee was imposed). See Flores v. City of Miami, 681 So. 2d 803 (Fla. 3d DCA 1996).

2. Noncharter counties have the same authority as municipalities and charter counties for entering into electric utility franchises and imposing franchise fees. Santa Rosa County v. Gulf Power Co., 635 So. 2d 96 (Fla. 1st DCA 1994).

3. A county cannot unilaterally impose an electric utility privilege fee on electric utilities for their use of county rights-of-way without consent of the utility in the form of a franchise agreement. See Alachua County v. State, 737 So. 2d 1065 (Fla. 1998).

e. Regulatory Fees.

1. Section 166.221, Florida Statutes, provides:

A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

2. Generally, these fees are restricted in use only for the activity that they were imposed.

f. Impact Fees.

1. Defined. Impact fees are charges against new development to provide for the cost of capital facilities made necessary to accommodate the new growth. See City of Dunedin v. Contractors and Builder's Ass'n of Pinellas County, 312 So. 2d 763 (Fla. 2d DCA 1975). The fees can only be used for capital costs of growth related projects; the costs of

operation and maintenance cannot be funded with impact fee revenue. The fee must be used or encumbered within a reasonable amount of time.

2. Validity – Dual Rational Nexus Test. Impact fees must have a reasonable connection between the anticipated need for additional capital facilities and growth in population. Also, the fee must have a reasonable connection between the expenditure of funds collected and the benefits accruing to the growth. St. Johns County v. Northeast Florida Builder’s Ass’n, Inc., 583 So. 2d 635 (Fla. 1991)(upholding county imposition of school impact fees on behalf of the school board); but see Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000)(ruling that school impact fee was unconstitutional, as applied, to an age restricted residential community).

3. Cases of Interest: Hollywood, Inc. v. Broward County, 431 So. 2d 609 (Fla. 1983)(upholding impact fees for parks; Contractors and Builders Ass’n of City of Dunedin, 329 So. 2d 314 (Fla. 1976)(holding that ordinance imposing the impact fees must earmark the revenue; upholding water and sewer impact fees); Home Builder’s and Contractor’s Ass’n v. Palm Beach County, 446 So. 2d 140 (Fla. 4th DCA 1983)(upholding impact fees for county roads); City of Ormond Beach v. County of Volusia, 535 So. 2d 302 (Fla. 5th DCA 1988)(upholding impact fees for county roads); City of Zephyrhills v. Wood, 831 So. 2d 223 (Fla. 2d DCA 2002)(upholding utility connection fee as a valid impact fee).

2. Non-ad Valorem Special Assessments: the services and facilities that are generally available to be funded with non-ad valorem special assessments are solid waste collection, disposal and facilities; stormwater services and facilities; street system (road paving and maintenance) and accessories (street lights); fire suppression, alone; and fire suppression and first response rescue (but not emergency medical services).

a. The legal test for being able to use a non-ad valorem special assessment as a revenue source is that the service or facility being funded must provide a special benefit to property (as opposed to a general benefit to the community at large). In addition, the amount of the assessment must be fair and reasonable, when compared to the benefit received. See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992)(articulating legal test and holding that special assessments could be levied pursuant to home rule powers).

b. Special Benefit to Real Property.

1. Stormwater assessment upheld as benefiting real property in State of Sarasota County, 693 So. 2d 546 (Fla. 1997); Sarasota County v. Sarasota Church of Christ, 661 So. 2d 180 (Fla. 1995).

2. Garbage collection held to benefit real property in Harris v. Wilson, 693 So. 2d 945 (Fla. 1997); Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977).

3. 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).

4. 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);

5. 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) and Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997);

6. 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);

7. Parking Facilities: City of Naples v. Moon, supra;

8. Downtown Redevelopment: City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992);

9. Stormwater Management Services: Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995);

10. Water and Sewer Line Extensions: Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995);

11. Neighborhood Amenities: City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001); but see, 851 So. 2d 256 (Fla. 5th DCA 2003)(ruling that a special assessment on vacant property in one neighborhood for enhanced law enforcement for that neighborhood and for a community center primarily for that neighborhood was invalid).

12. Compare this analysis with: Crowder v. Phillips, 146 Fla. 440, 1 So. 2d 629 (Fla. 1941)(invalidating a special assessment for a hospital because the assessment did not afford a special or peculiar benefit to the property assessed); Whisnant v. Stringfellow, 50 So.2d 88f (Fla.1951)(invalidating an assessment for county health unit because no benefit to real property); and City of North Lauderdale v. SMM Properties, 825 So. 2d 343 (Fla. 2002)(holding no special benefit to property from emergency medical services).

b. Property apportionment.

1. Apportionment based on property values upheld. City of Boca Raton, supra.

2. Proper to apportion greater part of stormwater assessment to properties with impervious surface. Sarasota County, supra.

3. Proper to apportion greater part of garbage assessment to developed residential property. Harris, supra.

4. In City of Naples v. Moon, 269 So. 2d 355 (Fla. 1972), the court upheld apportionment for parking facility assessment on floor space.

5. In Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969), the court upheld sewer assessment based on square foot basis.

6. In Bodner v. City of Coral Gables, 245 So. 2d 250 (Fla. 1971), the court upheld street improvement based on a lineal foot basis.

c. Determination as to benefit assessment and apportionment made by local government to be upheld if not arbitrary and capricious. State v. Sarasota County, *supra*.

d. Statute of limitations. In Keenan v. City of Edgewater, 684 So. 2d 226 (Fla. 5th DCA 1996), the court discussed cases on length of statute of limitations for challenging special assessments and cited to section 194.17(2), Florida Statutes, providing for 60-day limitation and Thompson v. City of Key West, 82 So. 2d 749 (Fla. 1955); Smith v. City of Arcadia, 185 so. 2d 762 (Fla. 2d DCA 1963); and Carson v. City of Fort Lauderdale, 155 so. 2d DCA 1963), which adopted shorter limitations periods. The Keenan court decided it was unnecessary to address which was applicable because more than four years had passed since resolution levying assessment, therefore, under any option including section 95.11(3), Florida Statutes (catch-all statute), limitation period had run.

D. STATE REVENUE SHARING

1. The Revenue Sharing Trust Fund for Counties consists of two state revenues: 2.9 percent of cigarette tax collections and 2.25 percent of net state sales tax collections, pursuant to sections 210.20(2)(a) and 212.20(6)(e)(5), Florida Statutes. The Revenue Sharing Trust Fund for Municipalities includes 32.4 percent of state cigarette tax collections and 12.5 percent of the state alternative fund user decal collection. See sections 206.605 and 206.879(1), Florida Statutes.

a. There are certain authorized uses and limitations for the shared funds received by counties. The first and second guaranteed entitlements may be pledged for debt by counties. As of July 1, 2004, counties may pledge up to 50 percent of the total amount of revenue sharing received in the prior year.

b. A municipality may expend its share of the Revenue Sharing Trust Fund for Municipalities generated from sales tax on any purpose. However, it may only pledge a portion of the revenues defined as the “guaranteed entitlement” to retire bonded indebtedness. See sec. 218.25, Fla. Stat. The portion of the Trust Fund allocation attributable to the municipal gas tax may be expended for transportation purposes only. See sec. 206.605, Fla. Stat.

2. Half-cent Sales Tax Program: Chapter 218, Part VI and Section 212.20, Florida Statutes

a. The local government half-cent sales tax program returns to municipalities and counties a percentage of state sales tax proceeds remitted pursuant to Chapter 212, Florida Statutes. The local government share is based on the sales tax collected in each county. The county's share is determined by dividing the sum of the unincorporated area population plus two-thirds of the incorporated area population by the sum of the total county population plus two-thirds of the incorporated area population. The municipality's share is determined by dividing the population of the municipality by the sum of the total county population plus two-thirds of the incorporated area population. This revenue may be used for any county or municipal purpose; however there is a restriction that a portion of the county's funds, based on population, be spent on a countywide basis.

b. Small counties meeting certain requirements may receive an additional distribution from the half-cent sales tax program. The "Emergency Distribution" distributes a percentage of sales tax to counties with a population of 65,000 or less that meet the eligibility requirement. The "Supplemental Distribution" distributes \$592,000 to counties that are eligible to receive the Emergency Distribution and that have a certain percentage of the total population incarcerated in state and federal facilities.

3. Pari-Mutuel Revenue: section 212.60(6)(e)(7), Florida Statutes

The State, under Art. VII, sec. 7, Florida Constitution, distributes the taxation of pari-mutuel pools to the counties in equal amounts. Before 2000 each county received \$446,500 annually. Beginning on July 1, 2000, the Legislature repealed the sharing of pari-mutuel revenues with counties and replaced that revenue with a portion of the state sales tax. The replacement revenue equals \$29,915,500 annually, which is apportioned equally among the 67 counties at \$446,500 each. In many counties, these revenues are shared with the school boards.

4. State Housing Initiative Partnership ("SHIP"): Section 420.9072, Florida Statutes

The SHIP Act provides for documentary stamp tax revenue to be distributed to counties and eligible municipalities, if certain conditions are met. SHIP requires the creation of an affordable housing program and a review of regulatory barriers to affordable housing. The distribution is based on population with a \$350,000 annual minimum allocation for each county. The revenue must be shared by the county with eligible municipalities based on an interlocal agreement or by population, when no interlocal exists.

5. Emergency management assistance. Section 252.371, et seq. imposes an annual surcharge on homeowners and commercial property/casualty insurance policies for emergency preparedness, a certain portion of which is shared with local government through grants.

6. Mobile home license tax. Section 320.08(10) and (11), Florida Statutes, provides that an annual license tax be levied on park trailers and mobile homes in lieu of ad valorem taxes. Proceeds are remitted to school boards, municipalities and counties based on statutory formula and location of the mobile home.

II. BORROWING POWERS.

Local government obligations may be classified in several different ways. Under the laws of most states and under Florida law, two significant classifications of public debt are used: general obligation and revenue bonds.

A. General obligation bonds. A general obligation bond is secured by full faith and credit of an issuer with taxing power and is also secured by a pledge of such issuer's taxing power. See Art. VII, sec. 12, Fla. Const. This section provides as follows:

Local bonds. Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

Local governments may issue bonds payable from ad valorem taxation and maturing within 12 months without a referendum. Examples include tax anticipation notes, such as those often issued by school districts, and other cash flow financing measures such as commercial bank loans and lines of credit. See also the discussion of obligations which are "subject to annual appropriation" such as equipment and other leases and certificates of participation, below.

1. Bonds subject to the referendum requirement may only be issued for capital projects.

2. Referendum. A general description of the provisions of Florida law relating to the holding of a referendum election may be found in Chapters 100 and 101, Florida Statutes. Generally, a second referendum is not required for bonds issued to refund or refinance bonds which were subject to the referendum, if the refunding or refinancing results in a lower net average interest cost rate.

3. Necessity for referendum. In County of Volusia v. State, 417 So. 2d 968 (Fla. 1982), the court held that although bonds purported to be paid from non ad valorem revenues, a pledge which in effect involved pledge of ad valorem revenues would still be subject to referendum requirements.

4. Election procedure. In Kessler v. City of Winter Park, 696 So. 2d 761 (Fla. 1997), the court held in bond election the city was not required to include detailed a cost of purchasing golf course in ballot language.

B. Revenue bonds generally.

1. Definition. Revenue bonds are debt obligations as to which the full faith and credit of an issuer other than ad valorem taxes is not pledged. Revenue bonds are payable from specific sources of revenue, and do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service. See Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1980).

2. Pledged revenues may be derived from operation of the financed project, grants and excise taxes or other specified non ad valorem tax revenue. Generally, no voter approval is required under state law prior to issuance of such bonds. Most bonds issued by local governments in Florida are revenue bonds. See County of Volusia v. State, 417 So. 2d 968 (Fla. 1982), for a discussion of how bonds payable from non ad valorem revenues may be considered an indirect pledge of ad valorem taxation and, therefore, subject to the referendum requirements described above; see also Webster v. North Orange Memorial Hospital Tax District, 187 So. 2d 37 (Fla. 1966).

3. Authority.

In Rowe v. St. Johns County, 668 So. 2d 196 (Fla. 1996), the court held that counties had home rule power to issue bonds for acquisition of convention center. Chapters 125 and 159, Florida Statutes, procedures just supplemental.

4. Examples of various types of revenue bonds. Examples of typical revenue bonds include bonds payable from utility revenues, such as water and sewer revenues. However, other examples of revenue bonds include those payable from various sources of non ad valorem revenues, such as excise taxes, gas taxes or state revenue sharing monies. Examples of state shared revenues include guaranteed entitlement revenues and the local government half-cent sales tax.

5. Covenant to budget and appropriate. In recent years, local governments in Florida have been issuing bonds secured by a covenant of the local government to budget and appropriate legally available non ad valorem revenues for the payment of debt service. Such bonds are not secured by a specific lien upon or pledge of specific non ad valorem revenues. Such covenant is, subject to the requirement that the local government pay for all essential governmental services. Additionally, the local government does not covenant to maintain any revenue source or service. This type of covenant is structured to address the concerns raised in County of Volusia v. State, *supra*. The question of what constitutes an essential governmental service is subject to judicial interpretation. See Washington Shores Homeowners' Association v. City of Orlando, 602 So. 2d 1300 (Fla. 1992), and State v. Tampa Sports Authority, 188 So. 2d 795 (Fla. 1996).

6. Industrial development bonds. This broad category includes conduit bonds issued by local industrial development authorities, housing finance authorities, health facility authorities, and other governmental units on behalf of an underlying borrower. These bonds may also be issued directly by cities and counties and some other governmental units. These bonds are typically payable solely from revenues derived from loan, lease or installment sale payments with the private party utilizing the bond proceeds.

a. Chapter 159, parts II and III, Florida Statutes, provides basic authority for issuance of bonds for industrial development. Examples include bonds issued for manufacturing facilities and tourism facilities. These bonds may not be payable from revenues of the issuer, other than revenues received under the loan agreement.

b. See State v. Dade County, 250 So. 2d 875 (Fla. 1971); State v. Putnam County Development Authority, 249 So. 2d 6 (Fla. 1971); and State v. Leon County, 410 So. 2d 1346 (Fla. 1982).

c. Chapter 159, Part III, Florida Statutes, provides authority for the issuance of bonds to finance housing projects, including both single family and multi-family projects. Article VII, section 16, Florida Constitution, provides that when authorized by law revenue bonds may be issued without an election to finance or refinance housing or related facilities in Florida. Chapter 159, Florida Statutes, provides that each county of the state may create a housing finance authority in order to facilitate the construction and rehabilitation of housing for low income families through the use of public financing.

7. Health Facilities. Chapter 154, part III, Florida Statutes, provides authority for the issuance of bonds to finance health facilities.

a. In Noble v. Martin County, 682 So. 2d 1089 (Fla. 1996), the court held that county health facilities authority had power to issue bonds for expansion of medical center facilities pursuant to section 154.207(1), and that question of whether issuance of bonds gave competitive edge over other health care facilities was a collateral issue not appropriate for bond proceeding.

8. Community redevelopment bonds.

a. Bonds issued under Chapter 163, Florida Statutes, for purposes of community redevelopment may be payable from the “tax increment” or the difference between the assessed value of the property before and after the redevelopment project. See State of Miami Redevelopment Agency, 392 So. 2d 875 (Fla. 1980), and Holloway v. Lakeland Downtown Development Authority, 417 So. 2d 963 (Fla. 1982).

b. Part III of Chapter 163, Florida Statutes, establishes the Community Redevelopment Act. Any county or municipality may create a community redevelopment agency by finding one or more slums or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income exist in the community and rehabilitation, conservation or redevelopment of such an area is necessary in

the interest of the public health, safety, morals or welfare of the residents. The purpose of the redevelopment project is the elimination and prevention of the development or spread of slums and blight or the provision of affordable housing whether for rent or for sale, to residents of low or moderate income.

c. “Slum or blight” may not be limited to typical downtown areas needing revitalization. Section 163.385 authorizes the governing body of a county or municipality to issue redevelopment revenue bonds and refunding bonds to finance any undertaking of any community redevelopment plan. See Panama City Beach Community Redevelopment Agency v. State, 831 So. 2d 662 (Fla. 2002)(upholding finding of beach front, undeveloped property to be “blight” because such a substantial record of the finding had been laid).

9. Certificates of participation and lease purchase options.

a. Certificates of participation. Certificates of participation represent an undivided interest in lease payments from a governmental unit. The local government enters into a lease agreement with a not-for-profit corporation. In order to provide the costs of the project, the trustee sells interests in the lease agreement to outside investors. These outside investors hold a certificate representing the right to participate in the lease payments. The lease is subject to appropriation each year by the government unit. The lease term coincides with the fiscal year of the issuer, and if no appropriation is made, the lease terminates. Therefore, this lease may be payable from any revenues of the local government, including ad valorem taxes. See State v. School Bd. of Sarasota County, 561 So. 2d 549 (Fla. 1990); see also, State v. Brevard County, 539 So. 2d 461 (Fla. 1989). Specific authority for counties to issue these agreements is found in section 125.031, Florida Statutes. It would appear municipalities would have authority pursuant to home rule.

b. Equipment leases and lease purchases. Typically used for computer, vehicle and other equipment financing. Annual lease payments are subject to appropriation and no revenue stream is pledged. Very similar to certificates of participation discussed above, however, on a smaller scale without the public issuance and sale of participation certificates. Some form documents from vendors include a covenant to budget and appropriate the lease payments each year, which would make that particular transaction more akin to general revenue bonds. Remedies under an equipment lease should be limited to traditional lease remedies, such as return of property. Foreclosure cannot be a remedy (without a referendum) as discussed below due to the restrictions on a local government’s ability to mortgage property or grant a security interest in property (other than revenue stream). See Leon County Educational Facilities v. Hartsfield, 698 So. 2d 526 (Fla. 1997)(holding that property leased by a governmental entity from nonprofit corporation which was established solely for purposes of facilitating financing property is exempt from ad valorem taxation); see also Frankenmeuth Mutual Insurance Co. v. Magaha, 769 So. 2d 1012 (Fla. 2000)(holding that non-substitution clause in lease-purchase agreement that prohibited county from buying or renting substitute computer equipment, if funds for the lease payments were not appropriated and the lease terminated, violated the constitutional requirement of voter approval for "certificate of indebtedness" payable from ad valorem taxation).

10. Limitations on borrowing powers.

a. Public purpose.

1. Projects to be financed by municipalities must constitute a valid municipal purpose. Municipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. See Art. VIII, sec. 2(b), Fla. Const.; see also, State v. City of Sunrise, 354 So. 2d 1206 (Fla. 1978).

2. Charter counties shall have all powers of local self government not inconsistent with general law. See Art. VIII, sec. 1(f), Fla. Const.; see also State v. Broward County, 468 So. 2d 965 (Fla. 1985).

3. Noncharter counties shall have such power of self government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact county ordinances not inconsistent with general or special law. See Speer v. Olsen, 367 So. 2d 207 (Fla. 1978); State v. Orange County, 281 So. 2d 310 (Fla. 1973); Filligin v. State, 446 So. 2d 1099 (Fla. 1st DCA 1984); Taylor v. Lee County, 498 So. 2d 424 (Fla. 1986).

4. What constitutes a public purpose has changed over the years. Great deference is paid to a legislative finding of public purpose. Generally, courts will not overturn legislative finding of public purpose unless clearly erroneous. However, the bond validation concept of “public purpose” is not to be confused with the constitutional ad valorem taxation exemption analysis of “public or governmental” purpose. See Sebring Airport Authority v. McIntyre, 738 So. 2d 238 (Fla. 2001). Also, note that if a local government has used either its taxing power or pledge of credit to support issuance of bonds, purpose of obligation must serve “paramount public purpose” and any benefits to private party must be incidental. See State v. Osceola County, 752 So. 2d 530 (Fla. 1999).

5. In Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997), the court upheld use of bonds for building stadium and held that the same constituted a public purpose even through certain revenues guaranteed to private team owner. Not impermissible public private partnership; see also, State v. Osceola County, 752 So. 2d 530 (Fla. 1999)(holding that county had authority to issue bonds pursuant to Local Option Tourist Development Act for purpose of acquiring, constructing, and equipping county-owned convention center, even though county was not constructing facility, but rather was acquiring facility from private entity that would also operate facility).

6. In State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991), the court overturned a bond validation where no projects were identified and bonds were merely being issued for the purpose of reinvestment. The court held that borrowing money for the primary purpose of reinvestment is not a valid municipal purpose as contemplated by Article VIII, section 2, Florida Constitution.

b. No lending of credit.

Article VII, section 10, Florida Constitution, prohibits municipal corporations from giving, lending, or using their taxing power or credit to aid any corporation, association, partnership or person. See State v. Miami Beach Redevelopment Agency, 392 So. 2d 875 (Fla. 1980), contains a detailed analysis of this constitutional provision. The public purpose test to be met before a municipality's credit may be pledged to a bond issue. The lending of credit test is closely related to the public purpose test described above.

c. No mortgages.

1. Generally, local governments may not secure debt obligations with a mortgage on public property. See Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971). The Florida Supreme Court in Wilson v. Palm Beach County Housing Authority, 503 So. 2d 893 (Fla. 1982), modified the mortgage restriction to apply only to those governmental units with ad valorem taxing power.

2. This restriction on mortgages includes granting security interest in property, including purchase money security interests. This issue is raised particularly in the area of equipment and other leases as discussed above, as well as installment sales. Under this rule, a local government with taxing power may not grant a security interest in public property, absent voter approval.

3. This rule does not apply, however, to the pledging of a revenue stream to the repayment of debt.

d. Restrictions.

In State v. Sarasota County, 549 So. 2d 659 (Fla. 1989), the court held that county was required to have referendum prior to pledging gas tax because county charter required referendum on using tax revenues.

e. Contractual restrictions.

f. Must comply with statutory authorization for use of funds. For example, restrictions in other outstanding bond documents.

g. In Lozier v. Collier County, 682 So. 2d 551 (Fla. 1996), the court held that Collier County could utilize tourist development tax funds to refund beach renourishment bonds previously funded with ad valorem tax dollars.

11. Bond validation.

a. Chapter 75, Florida Statutes, provides for circuit court validation proceedings confirming the legality and authority for issuance of bonds, bonded debt, certificates of debt and matters related thereto, prior to the issuance of such obligations. The issuer files the

validation action and seeks an order to show cause why the bonds should not be validated and the local state attorney defends the action.

b. Case law also addresses validation of interlocal agreements under which a local government is obligated to make payments and lease purchase agreements. Issues to be considered in a validation proceeding include the validity of the bonds, or other obligations, the validity of any taxes, assessments or revenues which are pledged for the repayment of the bonds, the proceedings authorizing the issuance of the bonds and any remedies provided for collection of the obligation.

c. Validation proceedings pursuant to Chapter 75, Florida Statutes. May be utilized to validate all types of borrowing, including lease purchase and certificates of participation.

d. Court role in validation proceedings.

1. In Kessler v. City of Winter Park, 696 So. 2d 761 (Fla. 1997), the court reaffirmed duty of court in validation proceeding to 1) determine whether public body has authority to issue lands, 2) determine whether purpose of obligation is legal, and 3) ensure that land issue complies with requirements of law. See Noble v. Martin County Health Authority, 682 So. 2d 1089 (Fla. 1996); see also Sebring Airport Authority v. McIntyre, 738 So. 2d 238 (Fla. 2001).

2. In Noble v. Martin County, 682 So. 2d 1021 (Fla. 1996), the court held that county facility authority had power to issue bonds for expansion of medical center facilities pursuant to section 154.207(1). Whether issuance of bonds gave competitive edge over other health care facilities was a collateral issue not appropriate for bond proceeding. Collateral issues should not be considered. Collateral issues do not need to be decided to determine the validity of the bonds; however, which issues are related to the bonds are often material to the economic viability of the bond issue. Examples of collateral issues include:

- whether financing is economically sound and whether the issuer was exercising good business judgment;
- whether a conflict of interest existed in connection with the bond issue; and
- whether city's leases with airlines were valid where lease revenue was major source of airport revenues which were pledged to the payment of airport revenue bonds.

3. Independent special districts must allege in complaint the creation of a trust indenture established by the petitioner for a bonded trustee acceptable to the court which trustee shall certify the proper expenditure of the proceeds of the bonds.

4. Procedural matters.

a. Validation proceedings are filed in circuit court.

b. Chapter 75, Florida Statutes, provides that the plaintiff in a bond validation proceeding is the issuer of the bonds (e.g., county, municipality, taxing district or other political district of the state). State attorney is served with complaint and represents “defendant” state and property owners, although property owners and affected persons may intervene.

c. Statute requires order to show cause to be published once a week for two consecutive weeks, the first publication at least 20 days prior to hearing date. Florida Statutes provide direct appeal of validation orders to the Florida Supreme Court.

5. Effect of validation.

a. Binding effect of validation is based upon the doctrine of res judicata which is specifically addressed in chapter 75, Florida Statutes.

b. Validation judgments may still be subject to collateral attack with respect to issues not raised and adjudicated in validation proceedings.

6. Standing.

In Rich v. State, 663 So. 2d 1321, (Fla. 1995), the court held that parties who do not own property within district or pay taxes within district do not have standing in bond validation proceeding when only interest was the party contracted for purchase of services from district which services will not be affected by issuance of bonds.

III. Challenges to funding mechanisms.

A. Remedies

1. Refunds.

a. In Dryden v. Madison County, 696 So. 2d 728 (Fla. 1997), the court held that residents not entitled to refund of special assessments made in good faith by county were subsequently determined to have been illegally adopted. Assessment was nondiscriminatory. See Gullesian v. Dade County School Board, 281 So. 2d 325 (Fla. 1973).

b. In Osterndorf v. Turner, 426 So. 2d 539 (Fla. 1982), the court held taxpayers challenging illegal statute conditioning grant of homestead exemption was entitled to refund, but other taxpayers weren’t entitled to refund in that homestead exemption had been denied in good-faith reliance on presumptively valid statute.

c. In Broward Co. v. Burnstein, 470 So. 2d 793 (Fla. 4th DCA 1985), the court held fact that funds generated by invalid occupational license tax had long since been expended did not alone preclude refunds of taxes.

