

Winter 1982

Special Taxing Districts in Florida

David M. Hudson

Florida State University College of Law

Follow this and additional works at: <http://ir.law.fsu.edu/lr>



Part of the [Taxation-State and Local Commons](#)

Recommended Citation

David M. Hudson, *Special Taxing Districts in Florida*, 10 Fla. St. U. L. Rev. 49 (2017) .
<http://ir.law.fsu.edu/lr/vol10/iss1/2>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Florida State University Law Review by an authorized editor of Scholarship Repository. For more information, please contact bkaplan@law.fsu.edu.

SPECIAL TAXING DISTRICTS IN FLORIDA

DAVID M. HUDSON*

Over twenty years ago, Professor John C. Bollens referred to special districts as the "new dark continent of American politics,"¹ a phrase which he noted had been earlier applied to counties.² However quaint this expression may seem today, it is archaic in the sense that special districts, like their geographical analogue, have come of age. No longer are they hidden and mysterious with little impact on the establishment in the civilized world. Today in Florida there are more than 1,000 special districts³—twice the combined number of counties (67) and municipalities (389).⁴

Special districts perform functions and provide services which daily affect the lives of all Floridians. They have been established to provide services including free public schools,⁵ hospitals,⁶ drainage,⁷ airports,⁸ fire control,⁹ mosquito control,¹⁰ water hyacinth control,¹¹ and recreational facilities.¹² In short, special districts may perform a full range of governmental and proprietary functions, all of which could be performed by county or municipal government. Until recently, most special districts were organized to perform a single purpose or provide a single service, and to do so as an alternative to having the county or municipal government directly involved. Today, general law authority exists for the creation of special districts to provide multiple services and facilities,

* Assistant Professor of Law, University of Florida. B.S. Wake Forest 1968; J.D. Florida State University 1974; L.L.M. (Taxation) University of Florida 1975; L.L.M. London School of Economics, University of London 1980.

1. J. BOLLENS, *SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES* 1 (1957).
2. H.S. GILBERTSON, *THE COUNTY: THE "DARK CONTINENT" OF AMERICAN POLITICS* (1917).
3. Fla. H.R. Committee on Community Affairs, *Independent Special Districts in Florida*, Staff Report 1 (1979). The Department of Veteran and Community Affairs is now required to compile and publish annually a general census of local government. The 1981 Census reports 486 independent special districts in Florida in 1979; dependent special districts are not tallied. State of Florida, Department of Veteran and Community Affairs, *Census of Local Governments* 2 (1981).
4. FLORIDA STATISTICAL ABSTRACT 1981, 531.
5. FLA. CONST. art. IX, § 4(a).
6. *E.g.*, Marion County Hospital District, 1965 Fla. Laws, ch. 65-1905.
7. *E.g.*, Central Charlotte Drainage District, 1969 Fla. Laws, ch. 69-932.
8. *E.g.*, Hernando County Aviation Authority, 1961 Fla. Laws, ch. 61-2229, *as amended* by 1970 Fla. Laws, ch. 70-706.
9. *E.g.*, Lehigh Acres Fire Control District, 1967 Fla. Laws, ch. 67-1633.
10. *E.g.*, Amelia Island Mosquito Control District, 1971 Fla. Laws, ch. 71-781.
11. *E.g.*, Lee County Hyacinth Control District, 1967 Fla. Laws, ch. 67-1629.
12. *E.g.*, Daytona Beach Racing and Recreational Facilities District, 1963 Fla. Laws, ch. 63-2023.

and to do so in conjunction with (indeed, often as the alter ego of) the county.¹³

The power to tax is, perhaps, the paramount governmental power. It has in many instances been granted to special districts, but not uniformly, and not without limitation. The focus of this paper is on the taxing power of special district governments in Florida.

To begin any analysis or discussion of special districts, a definition of what one means by the term is in order. Fortunately, there is not a lack of definitions. Writers in local governmental law and public administration provide us with the general notion that special districts:

are organized entities, possessing a structural form, an official name, perpetual succession, and the rights to sue and be sued, to make contracts, and to obtain and dispose of property. They have officers who are popularly elected or are chosen by other public officials. They have a high degree of public accountability.¹⁴

The Florida Legislature has provided several statutory definitions, each of which is in keeping with the foregoing general concept. The first, within the context of chapter 165, Formation of Local Governments, provides: "'Special district' means a local unit of special government created pursuant to general or special law for the purposes of performing prescribed, specialized functions within limited boundaries."¹⁵

13. FLA. STAT. § 125.01(1)(q), (5) (1981).

14. J. BOLLENS, *supra* note 1, at 1.

Professor Pock is more graphic, noting that the term has often been used to describe "what was left of the totality of local governments after conventional and easily identifiable cities, counties, townships, and villages had been removed, . . . an amorphous sort of scrap heap through which writers were in the habit of rummaging until they found the particular device that was the object of their immediate interest." M.A. POCK, *INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS* 10 (1962).

15. FLA. STAT. § 165.031(5) (1981). This definition is particularly significant because chapter 165 now provides the exclusive procedure pursuant to general law for forming or dissolving special districts, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by the constitution. FLA. CONST. art. VIII § 6(e). FLA. STAT. § 165.022 (1981); Op. Att'y Gen. Fla. 075-108 (1975). Subsequently, the Legislature has provided by general law an alternative procedure exclusively for the establishment of community development districts. FLA. STAT. § 190.005 (1981). A "community development district" is a local or regional unit of special-purpose government created pursuant to chapter 190 and limited to the specialized functions authorized therein. The governing head is an independent body created, organized, constituted and authorized to function specifically as prescribed in chapter 190 for the delivery of urban community development services. FLA. STAT. § 190.003(6) (1981). In addition, the Legisla-

A similar, but slightly less broad, definition is supplied for purposes of part III of chapter 218, Financial Matters Pertaining to Political Subdivisions, Local Financial Management and Reporting: "'Special district' means a local unit of special government, except district school boards and community college districts, created pursuant to general or special law for the purpose of performing prescribed specialized functions, including urban service functions, within limited boundaries."¹⁶ The exclusion of district school boards and community college districts reflects the scope of the substantive provisions of chapter 218 rather than any definitional distinctions, although school districts may be distinguished from other special districts on the basis of their current constitutional foundation.¹⁷

I. HISTORY OF SPECIAL DISTRICTS IN FLORIDA

Providing authority for the creation of special districts for the purpose of establishing and maintaining public roads was one of the first acts¹⁸ of the Legislative Council of the Territory of Florida.¹⁹ The legislation signed by Governor William P. DuVal on September 13, 1822, established a procedure whereby interested householders could petition the county court for the appointment of three to five commissioners²⁰ who were authorized and charged with the duty of laying out the road for which the petition had

ture has, by a three-fifths vote of each house as prescribed by the constitution, FLA. CONST. art. III, § 11(a)(21), prohibited itself from enacting any special laws pertaining to the future creation of independent special districts for any of the purposes set forth in chapter 190. FLA. STAT. § 190.049 (1981).

16. FLA. STAT. § 218.31(5) (1981). The Special Districts Disclosure Act of 1979, 1979 Fla. Laws, ch. 79-183, (codified at FLA. STAT. ch. 189 (1981)), adopts by reference the § 218.31(5) definition. FLA. STAT. § 189.003(1) (1981). Also reflecting the governmental nature of special districts are the provisions of the general Florida Statutes definitions contained in § 1.01(9): "The words 'public body,' 'body politic' or 'political subdivision' include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state." FLA. STAT. § 1.01(9) (1981).

17. FLA. CONST. art. IX, § 4(a).

18. An Act Concerning Roads, Highways and Ferries, Acts of the Legislative Council, ACTS OF THE LEGISLATIVE COUNCIL, FLORIDA TERRITORIAL SESSION LAWS (September 13, 1822).

19. The Legislative Council provided for by Congress, Act of March 30, 1822, ch. 13, § 5, 3 Stat. 654 (1822), was comprised of thirteen "of the most fit and discreet" citizens appointed by the President and confirmed by the Senate. The Council, along with the Territorial Governor, constituted the unified government of the Territory of Florida.

20. The commissioners "shall be householders, resident in said county, not interested or living in the direction the road is to be run out." An Act Concerning Roads, Highways, and Ferries, *supra* note 18, at ¶ 2.

been filed.²¹ Subsequently, the county court was to appoint one or more justices of the peace to apportion the roads within the county into "road districts of convenient length."²² In turn, the clerk of the county court was to appoint an overseer²³ for each district to organize the labor force necessary to build or repair the district's roads.²⁴ While the road districts created under this act did not have the power of taxation, they did have the power of conscription:

[A]ll able bodied free white males between the age of sixteen and forty-five years, and residents for ninety days within any county in this Territory and all able bodied male slaves of the same age and residence, shall be subject to work on the public roads and highways in such county.²⁵

The Legislative Council, therefore, recognized that providing roads and highways, essential in a growing territory as a means for communication and transportation, was a function which could best be served by local citizens exercising governmental powers under the general supervisory umbrella of county government. Further, the scheme recognized that the needs and interests of residents of a county will often differ depending on where they reside within the county, and thus an entity whose geographical jurisdiction could be molded to fit local needs would be more responsive and effective than the county government itself.²⁶

The first legislative provision for special districts was by what might be referred to in contemporary terms as general enabling

21. *Id.*

22. *Id.* at ¶ 5.

23. *Id.*

24. *Id.* at ¶¶ 9, 11. The overseer was also charged with the duty to post road signs or directions within the district. *Id.* at ¶ 13.

25. *Id.* at ¶ 6. Failure to respond to the overseer's notice to report for work subjected one to a fine of one dollar per day of non-attendance. *Id.* at ¶ 9. The requirement of labor upon public roads and streets is not a tax. *Galloway v. Town of Tavares*, 19 So. 170 (Fla. 1896).

26. The Florida Legislature again recognized the importance of providing for a good system of public roads and highways when, during the first general assembly held after statehood was granted in 1845, legislation was enacted which essentially codified the territorial act discussed above. 1845 Fla. Laws, ch. 53. The Territorial Act itself had been given continuing vitality by the 1838 state constitution, FLA. CONST. art. XVII, § 1 (1839); the 1845 legislation made some changes to various provisions. As some indication of the order of priorities existing at the time, it was not until 1848 that the Legislature passed legislation to provide for the establishment of public schools in Florida. 1848 Fla. Laws, ch. 229 (passed the House of Representatives, December 22, 1848; passed the Senate, December 30, 1848; approved by the Governor, January 10, 1849). See *infra* note 33 and accompanying text.

legislation; however, early on the Legislature also turned to the equivalent of today's special act, whereby the Legislature *itself* creates a special district. In 1854, the Legislature designated five commissioners and empowered them to:

cause to be drained the body of Land known as the "Alachua Savannah," in the county of Alachua, by turning the waters of Newnan's Lake into Orange Lake, by ditching the Savannah and making a cut into Orange Lake, or by such other means as the Commissioners deem economical and necessary.²⁷

In order to pay for the improvements contemplated by the Act, the commissioners were authorized to assess the lands in the Alachua Savannah area a sum not to exceed \$35,000. Specific assessments were to be made against particular landowners in proportion to the quantity and quality of acreage to be benefited by the improvements.²⁸ Provisions were included to provide the landowners with notice of their assessment, opportunity for an administrative appeal, and procedures for the collection of assessments not timely paid.

II. CLASSIFICATION OF SPECIAL DISTRICTS

Special districts may, depending upon one's objectives, be classified according to a variety of criteria. For example, for purposes of imposing requirements of financial management and reporting, a distinction is made based upon who constitutes the governing head of the special district or establishes its budget. An "independent special district" has as its governing head an independent body and its budget is established independently of the local governing authority.²⁹ By contrast, the governing head of a "dependent special district" is the local governing authority, or its budget is established by the local governing authority.³⁰ However, such a classification for purposes of an analysis of the taxing powers of special districts is not particularly helpful. As we shall see, the important constitutional distinction relevant to the ad valorem taxing power of special districts is whether the district serves a "county purpose" or a "municipal purpose" and is within the ten mill cap im-

27. 1855 Fla. Laws, ch. 614.

28. Hence, the improvements were to be financed by special assessment rather than by taxes. For a discussion of the distinction, see *infra* note 142 and accompanying text.

29. FLA. STAT. § 218.31(7) (1981).

30. FLA. STAT. § 218.31(6) (1981).

posed by the constitution for each of those purposes, or whether the special district escapes the ten mill limitation and falls under the broader provision permitting whatever millage has been approved by referendum of the resident electors.³¹ Examination of this distinguishing feature will be deferred until discussion of the taxing power of special districts;³² however, two classifications of special districts shall be discussed separately at this point because of the special treatment accorded them in the Florida Constitution.

The first of these two categories is the school districts. Historically, the administration and financing of Florida's public schools has been perceived as a local responsibility, but one which general purpose local government was not best suited to serve. Special districts to provide local public schools were created as the population grew and the need arose. Initially the state constitution provided that a county or counties might be divided into convenient school districts,³³ and municipalities were permitted to be school districts as well.³⁴ By 1947 there were almost 600 school districts.³⁵ This caused many administrative problems and precipitated legislation consolidating them into sixty-seven school districts, whose boundaries were coextensive with the counties.³⁶ This formulation of the school districts now enjoys a constitutional foundation.³⁷ Similarly, the formulation of the school districts' governing body³⁸ and the description of the purpose these districts are to serve³⁹ is prescribed in the constitution. Additionally, school districts have specific constitutional power to levy ad valorem taxes⁴⁰ and issue bonds.⁴¹ Therefore, while school districts are clearly not units of general local government, and although they fit within the general definition of a special district, they will not receive further consid-

31. FLA. CONST. art. VII, § 9(b).

32. See *infra* notes 134-38 and accompanying text.

33. FLA. CONST. art. XII, § 10 (1885).

34. *Id.* art. XII, § 11.

35. See, F. BRYANT, *THE GOVERNMENT AND POLITICS OF FLORIDA* 144-45 (1957).

36. 1947 Fla. Laws, ch. 23726, § 12.

37. FLA. CONST. art. IX, § 4(a). Two or more contiguous counties may combine into one school district upon approval by the electors in each county. *Id.*

38. An elected school board shall be composed of five or more members. FLA. CONST. art. IX, § 4(a).

39. The school board is to operate, control and supervise all free public schools within the school district. FLA. CONST. art. IX, § 4(b). The general law provisions relating to education are found at FLA. STAT. ch. 228-246 (1981).

40. FLA. CONST. art. VII, § 9(a).

41. *Id.* § 12.

eration in this paper because of their peculiar constitutional status and their familiar, uniform presence throughout Florida.

The other classification of special districts which receives special constitutional consideration is the one providing water management facilities and services. In 1972 the Legislature attempted to reorganize the various water management districts in the state and place them under the general oversight of the Department of Natural Resources.⁴² The state was divided into five water management districts.⁴³ The effective date was initially set for July 1, 1973,⁴⁴ but was postponed until December 31, 1976.⁴⁵ As part of the overall legislative response to the issues involving water management, an amendment to the constitution was proposed relating to the maximum millage which could be levied for water management purposes:⁴⁶

Ad valorem taxes . . . shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property . . . for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill⁴⁷

Water management districts constituted under the Florida Water Resources Act⁴⁸ have their power to levy ad valorem taxes⁴⁹ limited by the above quoted constitutional provision.⁵⁰ It is unresolved, however, what impact that provision has on ad valorem taxes levied by a county, a municipality or another special district for "water management purposes."

42. The Florida Water Resources Act of 1972, 1972 Fla. Laws, ch. 72-299, (codified at FLA. STAT. ch. 373 (1981)).

43. 1972 Fla. Laws, ch. 72-299, § 12, (codified at FLA. STAT. § 373.069 (1981)).

44. 1973 Fla. Laws, ch. 73-190, § 6.

45. 1975 Fla. Laws, ch. 75-125, § 1.

46. Chapter 75-245 provided for a special election to be held on March 9, 1976. 1975 Fla. Laws, ch. 75-245. The amendment was approved and became effective January 4, 1977, in accordance with article XI of the constitution. FLA. CONST. art. XI, § 5(c).

47. FLA. CONST. art. VII, § 9(b).

48. 1972 Fla. Laws, ch. 72-299, (codified at FLA. STAT. ch. 373 (1981)).

49. Such ad valorem taxes are authorized by FLA. STAT. § 373.0697 (1981).

50. Op. Att'y Gen. Fla. 076-7 (1976).

III. ESTABLISHMENT OF SPECIAL DISTRICTS

A. Constitutional Considerations

None of Florida's constitutions has ever contained a provision specifically authorizing the creation of special districts, either by way of general enabling legislation or by special act. However, the earliest courts to address the issue relied upon the fundamental concept that the constitution is one of limitation and, unless it contains an express prohibition, the Legislature has the inherent power to use such a vehicle to effectuate valid public purposes.⁵¹ The current Florida Constitution, adopted in 1968, is likewise silent on the issue of legislative power to *create* special districts.⁵² The polestar of this maxim is that the special district must be created to further a public purpose.⁵³ However, the determination of what is a public, as opposed to a private, purpose is generally left by the courts to the discretion of the Legislature.⁵⁴

51. This was the thought behind the discussion of this point in *Stewart v. De Land—Lake Helen Special Rd. and Bridge Dist.*, 71 So. 42, 50 (Fla. 1916). The court in *Hunter v. Owens*, 86 So. 839, 844 (Fla. 1920), was more succinct:

It is within the power of the Legislature to establish a district of the character here considered as a governmental agency to effect the lawful public purpose of conserving the public health, comfort, convenience, and welfare of the district and its inhabitants, and to impose an ad valorem tax therefor.

The constitutional issue had been addressed even earlier by the United States Supreme Court, albeit in considering an act of the legislature of the state of Connecticut, in *Williams v. Eggleston*, 170 U.S. 304, 311 (1898):

Neither can it be doubted that, if the state constitution does not prohibit, the legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district and what property shall be considered as benefited by a proposed improvement. And in so doing it is not compelled to give notice to the parties resident within the territory or permit a hearing before itself, one of its committees, or any other tribunal, as to the question whether the property so included within the taxing district is in fact benefited.

52. The constitution continues the powers, jurisdiction and government of special districts existing on the effective date of the 1968 revision, November 5, 1968. FLA. CONST. art. VIII, § 6(b). Similarly, the ad valorem taxing powers and authorized tax millages of special districts were continued. *Id.* art. XII, §§ 2, 15. Limitations on the taxing and bonding powers of special districts were imposed. *Id.* art. VII, §§ 9, 10, 12, 14. In addition the Legislature has been effectively limited in the creation of special districts to provide public schools. See *supra* note 37 and accompanying text.

53. See *Jenkins v. Entzminger*, 135 So. 785, 789 (Fla. 1931).

54. In *Hunter v. Owens*, 86 So. 839 (Fla. 1920), the court upheld the creation of a special district which had been established "to effect the lawful public purpose of conserving the public health, comfort, convenience, and welfare of the district and its inhabitants." *Id.* at 844. The court held that the legislative declaration of the public purpose to be served would be sustained:

unless it clearly appears from the act itself, or from a consideration of the circumstances and conditions within which it is to operate, that the law in reality has no

Indeed, apparently only one special district has been judicially invalidated on the ground that the district was not serving a valid public purpose.⁵⁵ At issue was the Walkill Stump & Land Clearing District, created under the authority of a Special Act⁵⁶ of the Legislature "for the purpose of having such lands stumped and cleared, either in whole or in part, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit by stumping or clearing."⁵⁷ The court noted that the question of what is a public purpose "is a matter to be decided by the courts based upon the conditions, customs, and usages prevailing in each state."⁵⁸ Reviewing past decisions of the Florida Supreme Court, the court observed that drainage had been held to be a public purpose even though it was only for the reclamation of lands to make them available for cultivation and settlement. Nonetheless, the court stated that "this court does not believe that there is any basis upon which the Florida Supreme Court would make a decision holding that the pulling of stumps or the clearing of land is a public purpose any more than that plowing is a public purpose."⁵⁹

B. Methods of Establishing Special Districts

Prior to 1974, special districts in Florida were established either directly by the Legislature, or by legislation which established the procedures for local citizens or governmental entities to follow in creating a special district. When the Legislature itself created the

fair relation to the public purpose stated or manifestly intended, or that it in effect violates organic law while superficially appearing to serve a lawful public purpose.

Id. The court in *State ex rel. Davis v. Ryan*, 151 So. 416 (Fla. 1933), expressed the concept more forcefully:

Such a special taxing district may be established by the Legislature for particular public purposes, and, if created directly by the Legislature, must be recognized and can only be judicially set aside upon a showing of gross abuse of the legislative power in the enactment of its act of creation.

Id. at 418. More recently courts have imposed the requirement of public access, at least for special districts providing recreational facilities: "Without that availability, there is no public purpose." *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631, 633 (Fla. 1980).

55. *St. Paul Trust & Sav. Bank v. American Clearing Co.*, 291 F. 212 (S.D. Fla. 1923), *aff'd sub nom.*, *Citizens' Sav. Bank & Trust Co. v. St. Paul Trust & Sav. Bank*, 10 F.2d 1017 (5th Cir. 1926).

56. 1919 Fla. Laws, ch. 8008.

57. *Id.* § 1.

58. 291 F. at 227.

59. *Id.* at 228.

special district it was generally by a special act effective either upon becoming law,⁶⁰ or upon subsequent ratification by the affected electorate.⁶¹ General law authorization for the creation of special districts upon the initiative of local citizens became a popular approach and the Florida Statutes became rife with provisions for creating special districts. Each of these laws had its own unique procedure to be followed in creating a district. The basic approach may be illustrated by the general law authorizing the creation of special districts for the purpose of mosquito control.⁶²

The first step was to circulate a petition among the registered electors residing in the proposed district.⁶³ The petition was to describe the territory to be included in the district,⁶⁴ and reiterate that "the eradication or control of mosquitoes . . . is necessary for the preservation of the public health, comfort and welfare of the inhabitants."⁶⁵ After fifteen percent or more of the resident registered electors signed the petition, the second step was to present the petition to the board of county commissioners.⁶⁶ The petition would request an election to determine whether the district should be created and, if so, to elect a board of commissioners for the district.⁶⁷ The board of county commissioners was then to perform the essentially perfunctory tasks of determining that the petition had been signed by the requisite number of qualified individuals, that the improvements to be made were "for the benefit of the public health, comfort and welfare of the inhabitants," and that "it is feasible and practicable to eradicate or control mosquitoes and other arthropods in [the] territory."⁶⁸ After the board placed its

60. *E.g.*, the Daytona Beach Racing & Recreational Facilities District, created by 1953 Fla. Laws, ch. 29590, (repealed and superceded by 1955 Fla. Laws, ch. 31343 § 20).

61. *E.g.*, 1955 Fla. Laws, ch. 30666, providing for the creation of a fire control district in Collier County, was not to become effective until ratified by a majority of the qualified electors voting in an election called by the board of county commissioners. *Id.* § 15. This act was subsequently so approved, thereby creating the Immokalee Fire Control District. See 1957 Fla. Laws, ch. 57-1236.

62. FLA. STAT. ch. 388 (1973).

63. *Id.* § 388.031.

64. The territory of the district could include "any city town, or county, or any portion or portions thereof, whether such portion or portions include incorporated territory or portions of two or more counties in the state." *Id.* § 388.021.

65. *Id.* § 388.031 (declaration of the public purpose to be served).

66. *Id.* Presumably, if the district was to encompass territory in two or more counties, the petition was to be presented to the board of county commissioners of each affected county.

67. *Id.*

68. *Id.* § 388.041.

imprimatur on the petition,⁶⁹ the third phase was ushered in—the submission of the issue to a referendum of the registered electors residing within the proposed district.⁷⁰ At the same election, the three members of the board of commissioners were to be chosen from write-in candidates or from candidates nominated by petition.⁷¹ A simple majority of the votes cast in the election in favor of creating the district obligated the board of county commissioners to take the final step of entering its order constituting the district and designating it by name.⁷² The three persons receiving the highest number of votes cast were to be the commissioners of the district.⁷³

More generally, as part of the trend towards home rule, counties were given direct general power in 1971 to:

establish . . . special purpose districts, for any part or all of the unincorporated area of the county, of which the board of county commissioners shall be the governing body . . . [for] fire protection, law enforcement, beach erosion control, recreation facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, and other essential facilities and services.⁷⁴

This specific legislative grant was precipitated by an opinion of Attorney General Robert L. Shevin⁷⁵ that, absent such general law authorization, a county could not establish by home rule ordinance a special taxing district in the unincorporated area of the county to provide a municipal-type service, such as street lighting. Special districts, however, could be created pursuant to the 1971 legislation simply by the enactment of a county ordinance.

In 1974 the Legislature enacted two laws which affected the procedures for creating special districts. The first was chapter 74-191⁷⁶ which amended the provisions relating to the home rule powers of counties,⁷⁷ by providing:

69. The board of county commissioners' determination "that the petition is in all respects strictly in accordance with the requirements of law, shall be regarded for all purposes as conclusive." *Id.*

70. *Id.* §§ 388.051, .061.

71. *Id.* § 388.081.

72. *Id.* § 388.071.

73. *Id.* § 388.101.

74. 1971 Fla. Laws, ch. 71-14, § 1 (17) (codified at FLA. STAT. § 125.01(1)(q) (1981)).

75. Op. Att'y Gen. Fla. 071-95 (1971).

76. 1974 Fla. Laws, ch. 74-191.

77. FLA. STAT. ch. 125 (1973).

125.01 Powers and duties.—(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power shall include, but shall not be restricted, to the power to:

(q) Establish, and subsequently merge or abolish those created hereunder, ~~special purpose districts~~ municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such district unit only. It is hereby declared to be the intent of the Legislature that this paragraph is the authorization for all counties to levy additional taxes within the limits fixed for municipal purposes within such municipal service taxing units under the authority of the second sentence of Article VII, Section 9(b) of the state constitution.⁷⁸

Another section of the same act added a new provision pertaining to the creation of “special districts,” in contrast to “municipal service taxing or benefit units”:

To the extent not inconsistent with general or special law, the governing body of a county shall have the power to establish, and subsequently merge or abolish those created hereunder, special districts for any part or all of the county including incorporated areas if the governing body of the incorporated area affected approves such creation by ordinance within which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within such district only. Such ordinance may be subsequently amended by the same procedure as the original enactment.⁷⁹

Municipalities have not been granted express authority to create special districts, but their power to do so is implied in the broad grant of home rule power contained in the 1968 constitution⁸⁰ and

78. 1974 Fla. Laws, ch. 74-191, § 1. Underscored language was added by the Act; struck through language was deleted.

79. *Id.* § 4. This section was subsequently amended by 1980 Fla. Laws, ch. 80-407, § 1 (codified at FLA. STAT. § 125.01(5)(a) (1981)).

80. FLA. CONST. art VIII, § 2(b).

the Municipal Home Rule Powers Act.⁸¹

The other significant piece of legislation enacted in 1974 which pertained to the establishment of special districts was the Formation of Local Governments Act.⁸² Two years earlier the Legislature created the Commission on Local Government and charged it, *inter alia*, to study the operation and organization of counties, school districts, municipalities and special districts, and to recommend executive, statutory or constitutional changes necessary to improve local government.⁸³ The Commission issued a number of interim reports and drafted proposed legislation addressing many of the problem areas it uncovered.⁸⁴ One recommendation was that the myriad of provisions establishing procedures for the creation of special districts be repealed and replaced by a single, uniform procedure.⁸⁵ The legislative intent in this regard was expressly stated:

It is further the purpose of this act to provide viable and usable general law standards and procedures for forming and dissolving municipalities and special districts in lieu of any procedure or standards now provided by general or special law. The provisions of this act shall be the exclusive procedure pursuant to general

81. 1973 Fla. Laws, ch. 73-129, (codified at FLA. STAT. ch. 166 (1981)). Section 166.021(3) provides: "The Legislature recognizes that pursuant to the grant of power set forth in § 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act [with certain enumerated exceptions]." It should be emphasized that the discussion thus far has focused simply on the power to create a special district which has the power to levy ad valorem taxes. See *infra* Part V. Thus, Attorney General Jim Smith reached the conclusion that a municipality may not by ordinance create a special district and confer upon such district the power to levy ad valorem taxes within the district. Op. Att'y Gen. Fla. 078-92 (1978). The power of a municipality to create a special district lacking ad valorem taxing power was noted by reference to the provisions of § 165.041(2): "A charter for creation of a special district shall be adopted only by special act of the legislature or by ordinance of a county or municipal governing body having jurisdiction over the area affected." *Accord*, Op. Att'y Gen. Fla. 078-128 (1978).

In a charter county, the charter might preempt to the county the power to create special districts, in which case municipalities within that county would lack such power. The Dade County Charter contains such a provision. Dade County Charter, art. I, § 1.01(A)(11). Op. Att'y Gen. Fla. 074-244 (1974).

82. 1974 Fla. Laws, ch. 74-192.

83. 1972 Fla. Laws, ch. 72-44, § 1.

84. A summary of the Interim Reports and copies of proposed legislation are contained in the FINAL REPORT OF THE COMMISSION ON LOCAL GOVERNMENT (June 30, 1974). Copies of all of the Interim Reports and the Final Report are available at the Florida State Library, the Legislative Service Library and the Department of Community Affairs.

85. FINAL REPORT OF THE COMMISSION ON LOCAL GOVERNMENT, app. V, 29 (June 30, 1974). The Commission also recommended the Municipal Home Rule Act, *id.* at 15, and the amendments to the county home rule powers. *Id.* at 25. For a discussion of these acts, see *supra* notes 76-81 and accompanying text.

law for forming or dissolving municipalities and special districts in this state except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by the state constitution in article VIII, section 6(e). Any provisions of a general or special law, existing on the effective date of this act, in conflict with the provisions of this act shall not be effective to the extent of such conflict.⁸⁶

In the future, there were to be only three methods for creating special districts: "by special act of the Legislature or by ordinance of a county or municipal governing body having jurisdiction over the area affected."⁸⁷

The creation of a special district by county or municipal ordinance may be initiated by the respective governing body or, in certain circumstances, a county may be obliged to address the issue of whether a special district should be created. Either the governing body of a municipality by resolution, or the citizens of a municipality or county by petition, may identify a service or program which ostensibly benefits property or residents only in the unincorporated area of the county but which is financed by countywide revenues.⁸⁸ The board of county commissioners must respond to the resolution or petition within ninety days with a finding of fact that the service or program in issue does not specially benefit the property or residents of the unincorporated areas, or it must take action to develop "appropriate mechanisms" to correct the problem.⁸⁹ The options available to the county for financing activities

86. 1974 Fla. Laws, ch. 74-192, § 1, (codified at FLA. STAT. § 165.022 (1979)). The Attorney General has stated that the methods of creating a water management district under special or general law had been superseded by the provisions of Chapter 74-192 and such districts may, in the future, be established only in accordance with the provisions of this chapter. Op. Att'y Gen. Fla. 075-108 (1975).

87. FLA. STAT. § 165.041(2) (1981). The act also provided an exclusive procedure for the dissolution of a special district, *id.* § 165.051, and for the merger of two or more special districts or of municipalities or counties with special districts. *Id.* § 165.041(4). See *infra* note 287.

88. FLA. STAT. § 125.01(6)(a) (1981).

89. *Id.* § 125.01(6)(b). The foundation for this statutory provision is section 1(h) of article VIII of the Florida Constitution: "Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas." This provision was added to the Florida Constitution by the 1968 revision. Initially the courts interpreted it rather narrowly. In *City of St. Petersburg v. Briley, Wild & Associates, Inc.*, 239 So. 2d 817 (Fla. 1970), the court held that:

[T]he proper interpretation of the language of this section of the Constitution does not require a direct and primary use benefit from a particular service to city-located property in order to remove the same from the proscription of the consti-

which do not benefit municipal property or residents are to impose taxes, special assessments or user fees only upon residents or property in the unincorporated areas, or to establish a municipal service taxing or benefit unit.⁹⁰ Alternatively, the county may remit to the nonbenefited municipality or municipalities a portion of the county ad valorem taxes collected therefrom which are attributable to the program or service which benefits only the property or residents in the unincorporated areas.⁹¹

tutional provision. It is sufficient to authorize county taxation of such property if the benefits accruing to the municipal areas are found to be real and substantial and not merely illusory, ephemeral and inconsequential.

Id. at 823. Applying this test to the facts before it, the court concluded that a master sewage treatment plant located in the unincorporated area of Pinellas County would, by eliminating pollution and contamination of the soils, waters and streams of the unincorporated areas, thereby substantially benefit, health-wise and recreation-wise, the incorporated areas. *Id.* at 824.

This sentiment was codified by the enactment of § 1 of chapter 79-87 of the Laws of Florida (codified at FLA. STAT. § 125.01(7) (1981)):

No county revenues, except those derived specifically from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, or program area, shall be used to fund any service or project provided by the county where no real and substantial benefit accrues to the property or residents within a municipality or municipalities.

In *Alsdorf v. Broward County*, 333 So. 2d 457 (Fla. 1976), which involved a tax year prior to the enactment of § 125.01(6) in 1974, the court held that: "Article VIII, Section 1(h) of the Florida Constitution is self-executing, and that with or without legislative interpretation the courts will be required to draw the lines between acceptable and prohibited municipal taxation." *Id.* at 460 (footnote omitted). On remand, findings of fact were made that municipalities within the county did benefit from county provided libraries and sheriff's road patrols, but not from certain "neighborhood parks" maintained by the county in unincorporated areas and a county operated emergency medical service program. *Alsdorf v. Broward County*, 373 So. 2d 695. (Fla. 4th Dist. Ct. App. 1979). The court stressed that the decision was based on the facts of the case before it, and should not be taken as a broad interpretation of the controlling constitutional provision:

[T]his decision is limited to the facts, taxable years and circumstances of this particular case and should not be hailed as a precedent, providing "carte blanche" approval of any tax levied on municipal property. The relationship between individual cities and counties and the services provided by county agencies to municipal residents will continue to change based upon development and expansion of areas and programs. What has been proper for any given tax period is subject to appropriate change and re-evaluation.

Id. at 701. *See also*, *Burke v. Charlotte County*, 286 So. 2d 199 (Fla. 1973) (county ordinance authorizing levy of tax to provide for construction of roads in unincorporated areas of the county nonetheless benefited municipal residents); *City of Ormond Beach v. County of Volusia*, 383 So. 2d 671 (Fla. 5th Dist. Ct. App. 1980) (countywide library system benefited residents of municipality even though municipality operated its own public library).

90. FLA. STAT. § 125.01(6)(a) (1981).

91. FLA. STAT. § 125.01(6)(a) (1981) provides in pertinent part that counties may remit: the identified cost of service paid from revenues required to be expended on a countywide basis to the municipality or municipalities, within 6 months of the adoption of the county budget, in the proportion that county ad valorem taxes

Finally, any decision to create a special district may be made only if it appears that a special district is the best alternative available for delivering the service.⁹² If the special district is to have a governing body other than that of the municipality or county, the district must be amenable to separate special district government.⁹³ Judicial review of any special law or ordinance creating a special district is by certiorari.⁹⁴

C. Community Development Districts

In 1980 the Legislature enacted the Uniform Community Development District Act,⁹⁵ which substantially revised the provisions of the New Communities Act of 1975.⁹⁶ The general thrust of both pieces of legislation was to provide a method for financing and managing the construction, maintenance and operation of the major infrastructures necessary for new communities.⁹⁷ A central element in the approach taken initially in 1975 was to grant to private developers limited governmental status as a special improvement district in order to operate and finance the cost, delivery, and maintenance of certain predevelopment capital improvements such as water, sewer, road and drainage systems and other community facilities.⁹⁸ The 1980 revision withdrew a few of the sheep from the custody of the wolves, but retained the attribute of providing exclusive procedures for the creation of special districts which might carry out the purposes delineated in the Act.⁹⁹

A "community development district" is a special district created pursuant to the Act, limited to the performance of certain specialized functions enumerated in the Act, governed by an independent body created, organized and constituted in the Act, and otherwise subject to the provisions of the Act and general law pertaining to

collected within such municipality or municipalities bears to the total amount of countywide ad valorem taxes collected by the county, or by any other method prescribed by state law.

92. FLA. STAT. § 165.061(3) (1981).

93. *Id.* This requirement would not apply to a municipal service taxing or benefit unit created pursuant to section 125.01(1)(q) since the governing body of such a unit is the board of county commissioners. See FLA. STAT. § 125.01(2) (1981).

94. FLA. STAT. § 165.081 (1981).

95. 1980 Fla. Laws, ch. 80-407 § 2, (codified at FLA. STAT. ch. 190 (1981)).

96. 1975 Fla. Laws, ch. 75-204, (codified at FLA. STAT. ch. 163, Part V (1975)).

97. FLA. STAT. § 163.602 (1975); FLA. STAT. § 190.002 (1981).

98. FLA. STAT. § 163.602(3) (1975).

99. Compare FLA. STAT. §§ 190.005(1), (2) (1981) with FLA. STAT. § 163.603 (1975).

powers, accountability, requirements for disclosure, governing body, formation, and termination.¹⁰⁰ The specialized functions referred to relate generally to water management, water and sewer supply, bridges, roads, parks, fire prevention and control, security and school buildings, street lights and mosquito control.¹⁰¹

Two procedures are authorized for creating a community development district. If the district is to cover 1000 acres or more, it must be established by a rule adopted by the Florida Land and Water Adjudicatory Commission pursuant to the Administrative Procedure Act.¹⁰² The rule-making process is initiated by filing a petition with the Florida Land and Water Adjudicatory Commission.¹⁰³ The petition must contain a description of both the boundaries of the district and any real property within the boundaries which is to be excluded from the district.¹⁰⁴ The names and last known addresses of owners of such excluded real property are to be submitted along with the written consent to the establishment of the district by the owners of all the real property to be included in the district.¹⁰⁵ Alternatively, the petitioners may present documentation demonstrating that they control by deed, trust agreement, contract or option all of the real property sought to be included in the district.¹⁰⁶ The district is to be given a proposed name and the petition must name five individuals who are to serve as the initial board of supervisors.¹⁰⁷ A good faith estimate of the time and cost needed to construct the proposed district services

100. FLA. STAT. § 190.003(6) (1981).

101. *Id.* § 190.012.

102. *Id.* § 190.005(1)(a).

The Florida Land and Water Adjudicatory Commission is created by FLA. STAT. § 380.07 and consists of the Administration Commission which, in turn, is created by FLA. STAT. § 14.202 and is composed of the Governor and Cabinet.

The Administrative Procedure Act is codified as FLA. STAT. ch. 120 (1981).

103. FLA. STAT. § 190.005(1)(a) (1981).

104. *Id.* § 190.005(1)(a)(1).

105. *Id.* § 190.005(1)(a)(1) & (2).

106. *Id.* § 190.005(1)(a)(2).

107. *Id.* § 190.005(1)(a)(3)-(4). Within 90 days following the effective date of the establishment of the district, the owners of real property in the district are required to meet for the purpose of electing the members of the district's board of supervisors. Each landowner is entitled to one vote per acre, and the five individuals receiving the highest number of votes shall be elected initially for staggered terms of four years for two supervisors, and two years for the remaining three supervisors. Thereafter, elections are to be held every two years on the general election day, with the two candidates receiving the highest number of votes cast being elected for a four-year term and the third for a two-year term. *Id.* § 190.006(2).

must be submitted.¹⁰⁸ The petition shall also contain a map of the proposed district showing existing major trunk water mains and sewer interceptors and outfalls.¹⁰⁹ Finally, reference must be made to the future land-use plan element of the local government's comprehensive plan, adopted pursuant to the Local Government Comprehensive Planning Act of 1975, designating the future general distribution, location, and extent of public and private uses of land proposed for the area within the district.¹¹⁰

A public hearing on the petition must be held pursuant to the requirements of the Administrative Procedure Act.¹¹¹ The Florida Land and Water Adjudicatory Commission must then consider the record of the public hearing along with certain factors enumerated in the statute and either grant or deny the petition for the establishment of the district.¹¹² The factors which the Commission must consider are whether the statements in the petition are correct and true, whether the creation of the district would be inconsistent with either the state comprehensive plan or the local government comprehensive plan, whether the proposed district is of an appropriate size and configuration to be developable as one functional interrelated community, whether the district is the best alternative available for providing the contemplated services and facilities within the district, whether the district's proposed services and facilities will be compatible with existing local and regional services and facilities, and whether the district is amenable to separate special district government.¹¹³ If the Commission grants the petition, it must adopt a rule establishing the community development district consistent with the provisions of the Uniform Community Development District Act.¹¹⁴ The rule must name the district, the five persons designated to be the initial members of the board of supervisors and must describe the boundaries of the district as well as any real property within those boundaries excluded from the district.¹¹⁵

If the proposed district is less than 1000 acres, the exclusive method for creating it is by an ordinance adopted by the board of

108. *Id.* § 190.005(1)(a)(6).

109. *Id.* § 190.005(1)(a)(5).

110. *Id.* § 190.005(1)(a)(7). The Local Government Comprehensive Planning Act of 1975, 1975 Fla. Laws, ch. 75-257, (codified at FLA. STAT. §§ 163.3161-.3211 (1981)).

111. FLA. STAT. § 190.005(1)(b) (1981).

112. *Id.* § 190.005(1)(c).

113. *Id.*

114. *Id.* § 190.005(1)(d).

115. *Id.*

county commissioners of the county containing a majority of the area of the proposed district.¹¹⁶ The ordinance is triggered by the filing of a petition which must meet the same criteria described above for the over-1000 acre district.¹¹⁷ Similarly, a public hearing must be held,¹¹⁸ the board of county commissioners must consider the same factors imposed upon the Florida Land and Water Adjudicatory Commission,¹¹⁹ and the ordinance establishing the community development district must conform with the requirements of a rule for that purpose promulgated by the Commission.¹²⁰

In the event all of the land in the proposed district is within the territorial jurisdiction of a municipality, the petition requesting the establishment of a district is to be submitted to that municipality and the duties of the board of county commissioners described above devolve upon the governing body of the municipality.¹²¹

If the proposed district is less than 1000 acres, either the county or municipality which would have had jurisdiction to consider the petition and establish the district by ordinance may transfer the petition and its jurisdiction in the matter to the Florida Land and Water Adjudicatory Commission.¹²² The transfer of a petition is irrevocable and the Commission must consider the petition under the same procedures which would have been followed if the district had been within the Commission's jurisdiction initially.¹²³

The Legislature underscored its intention to provide the exclusive method for creating special districts for the purposes delineated in the Act by prohibiting the enactment of any special law pertaining to the future creation of independent special districts for any of the purposes set forth in the Act.¹²⁴ The Florida Constitution prohibits the enactment of any special law or general law of local application pertaining to any subject which has been prohibited by a three-fifths vote of the membership of each house,¹²⁵ and this provision was specifically utilized in the enactment of the Uni-

116. *Id.* § 190.005(2).

117. *Id.* § 190.005(2)(a).

118. *Id.* § 190.005(2)(b).

119. *Id.* § 190.005(2)(c).

120. *Id.* § 190.005(2)(d).

121. *Id.* § 190.005(2)(e).

122. *Id.* § 190.005(2)(f).

123. *Id.*

124. *Id.* § 190.049.

125. FLA. CONST. art. III, § 11(a)(21).

form Community Development District Act.¹²⁶

A special district created pursuant to the foregoing procedure is, through its governing body (the board of supervisors),¹²⁷ authorized to levy ad valorem taxes¹²⁸ and to impose special assessments¹²⁹ pursuant to the procedures provided by general law. Ad valorem taxes levied by the district are in addition to county, municipal, or other ad valorem taxes provided for by law¹³⁰ and must "be approved by referendum when required by the State Constitution."¹³¹ Presumably this last provision refers to the requirement that a special district may levy ad valorem taxes at a rate not to exceed a millage which has been approved by a vote of the electors.¹³²

IV. TAXING POWER

A. *Source of Power*

A state possesses the inherent power to tax as an attribute or characteristic of its sovereignty, limited only by the federal or state constitutions.¹³³ A special district, however, operates from the opposite perspective. Although created by or under the authority of the state to carry out a bona fide public purpose, a special district has no inherent power to tax and may levy taxes only when expressly granted the power to do so.¹³⁴ This fundamental concept is underscored by the provision of the Florida Constitution that "[n]o tax shall be levied except in pursuance of law."¹³⁵ The constitution further acknowledges the legislative power to grant taxing power to special districts in the section entitled "Local Taxes": "[s]pecial districts may . . . be authorized by law to levy ad

126. 1980 Fla. Laws. ch. 80-407, § 4. The Act, introduced as HB 1776, received the requisite three-fifths vote in both the House, Fla. H.R. Jour. 1226 (Reg. Sess. 1980), and the Senate, Fla. S. Jour. 1001 (Reg. Sess. 1980).

127. FLA. STAT. § 190.003(4), (1981).

128. *Id.* § 190.021.

129. *Id.* § 190.022.

130. *Id.* § 190.021(1). Apparently, such special districts do not therefore have to "share" the county's ten mill cap pursuant to § 200.071 of the Florida Statutes. See *infra* note 256 and accompanying text.

131. *Id.*

132. FLA. CONST. art VII, § 9(b). See *infra* note 256 and accompanying text.

133. *Hunter v. Owens*, 86 So. at 843; *Cheney v. Jones*, 14 Fla. 587, 610 (1874); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819).

134. *Atlantic Coast Line R.R. v. Amos*, 115 So. 315, 320-21 (Fla. 1927), citing *T. COOLEY, THE LAW OF TAXATION* § 130 (4th ed. 1924).

135. FLA. CONST. art. VII, § 1(a).

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."¹³⁶

The sovereign, legislative power to tax may be exercised through a special district if it is limited as to the rate of levy or the amount to be collected.¹³⁷ However, failure to duly limit a special district's taxing power does not necessarily destroy the corporate entity or legal functions of the district.¹³⁸

B. *Special Assessments and User Fees Distinguished*

Before exploring further the nature and extent of a special district's power of taxation, it is important to distinguish two other sources of revenue which a special district might have. The first of these is the power to impose a fee or a charge either for the use of property belonging to the special district or for a service provided by the special district. Quite simply, such a fee or charge is not a tax.¹³⁹ A tax is defined as "an *enforced* burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform."¹⁴⁰ A charge voluntarily incurred by using certain public property, such as the payment of a toll for the privilege of driving an automobile across a bridge, does not constitute the payment of a tax. This holds true even where the total amount of funds collected exceeds the amount necessary to pay for the construction of the bridge and thereafter is used to defray other expenses of the governmental entity which owns and operates the bridge.¹⁴¹

Secondly, charges in the nature of special assessments are to be distinguished from taxes:

A "special assessment" is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed

136. FLA. CONST. art. VII, § 9(a).

137. *Merriman v. Hutchinson*, 116 So. 271 (Fla. 1928); *Stewart v. Daytona and New Smyrna Inlet Dist.*, 114 So. 545, 547 (Fla. 1927).

138. *State ex rel. Davis v. Ryan*, 158 So. 62, 69 (Fla. 1934).

139. *State ex rel. Watson v. Caldwell*, 23 So. 2d 855, 856 (Fla. 1945); *Masters v. Duval County*, 154 So. 172, 174 (Fla. 1934). Nor is it a "special assessment." *Day v. City of St. Augustine*, 139 So. 880, 885 (Fla. 1932).

140. *Klemm v. Davenport*, 129 So. 904, 907 (Fla. 1930) (emphasis added).

141. *State ex rel. Landis v. Duval County*, 141 So. 173, 175 (Fla. 1932).

by entirely different principles. It is imposed upon the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially.¹⁴²

The source of the power to impose a special assessment is the same as the source of the power to levy a tax: the inherent sovereign power of the state.¹⁴³ The distinction between a special assessment and a tax is often blurred because the Legislature provides that the procedures used to assess and collect special assessments are the same procedures authorized to assess and collect general taxes,¹⁴⁴ the general public perceives special assessments as taxes, and special assessments are commonly referred to as taxes.¹⁴⁵

The distinguishing feature is the nexus between the particular service or facility to be funded by the special assessment and the benefit flowing therefrom to the property or persons required to pay it. Any exercise of the power of taxation must be to further a public purpose and for the benefit of the property or residents within the taxing jurisdiction.¹⁴⁶ However, where the levy imposed is a tax in the broader, more general sense, the benefit to a particular person or property need not be demonstrated. Instead, only a benefit to the public in general need be shown.¹⁴⁷ Indeed, the pendulum may swing too far in the other direction: if the tax is imposed only within a limited area but is for a purpose which will benefit persons or property lying far beyond the taxed jurisdiction, such a general tax may be held invalid.¹⁴⁸ However, if the levy is a special assessment, that "peculiar species of taxation,"¹⁴⁹ there must be a demonstrable benefit to the property assessed. The benefit must be something more than the benefit the community at

142. 129 So. at 907. See generally, C.H. HAMILTON, THE LAW OF TAXATION BY SPECIAL ASSESSMENTS (1907).

143. 139 So. at 885; *Anderson v. City of Ocala*, 91 So. 182, 186 (Fla. 1921).

144. *City of Naples v. Moon*, 269 So. 2d 355, 358 (Fla. 1972); *Roesch v. State ex rel. Wyman*, 56 So. 562, 563 (Fla. 1911).

145. 139 So. at 885; *Sovereign Camp W.O.W. v. Lake Worth Inlet Dist.*, 161 So. 717, 719 (Fla. 1935). See *St. Lucie County—Fort Pierce Fire Prevention and Control Dist. v. Higgs*, 141 So. 2d 744, 745 (Fla. 1962), for a discussion of chapter 59-1086 of the Laws of Florida.

146. *Smith v. Lummus*, 6 So. 2d 625 (Fla. 1942).

147. *Blake v. City of Tampa*, 156 So. 97 (Fla. 1934).

148. *State ex rel. Milton v. Dickenson*, 33 So. 514 (Fla. 1902).

149. *Lainhart v. Catts*, 75 So. 47, 52 (Fla. 1917).

large might receive;¹⁵⁰ the market or utility value of the property must be enhanced.¹⁵¹ The cost of the improvement is then allocated among the properties which have been benefited in accordance with the relative degree of benefit each parcel has received,¹⁵² and the assessment imposed on any particular parcel may not exceed the value of the benefit it has received.¹⁵³

The distinction drawn between a special assessment and a general tax is important also in the determination of whether the homestead exemption applies to the levy in question. The constitution provides:

Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, *except assessments for special benefits*, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law.¹⁵⁴

In an early interpretation of the predecessor to this provision,¹⁵⁵ the exemption was held not to apply in the case of a levy for the maintenance, upkeep, salaries and other incidentals of a hospital district and two special road and bridge districts.¹⁵⁶ In the first decision construing the language used in the present constitution, the court went to some length to explore the distinction between an assessment for special benefits and an ad valorem tax:

The typical ad valorem levy is the annual imposition for the

150. *City of Ft. Myers v. State*, 117 So. 97, 104 (Fla. 1928).

151. *Crowder v. Phillips*, 1 So. 2d 629, 630-31 (Fla. 1941).

152. *Davis v. City of Clearwater*, 139 So. 825, 827 (Fla. 1932).

153. *Summerland, Inc. v. City of Punta Gorda*, 134 So. 611, 613 (Fla. 1931).

154. FLA. CONST. art. VII, § 6(a) (emphasis added). By amendment adopted in 1979, see Fla. SJR 1-B, (Spec. Session 1979), authority was granted to the Legislature to provide by general law for the increase of the amount of assessed valuation to be exempt from taxation. FLA. CONST. art. VII, § 6(c). This has been implemented and the amount of assessed value exempt from each levy, other than that of school districts, was \$15,000 in 1980, \$20,000 in 1981, and will be \$25,000 in 1982 and each year thereafter. *Id.* art. VII, § 6(d).

155. The amendment to the 1885 constitution which first provided for the homestead exemption was adopted in 1934 and excluded "special assessments for benefits." By further amendment in 1938 the phrase was changed to "assessments for special benefits," the same language which is presently in effect. In *Fisher v. Board of County Comm'rs*, 84 So. 2d 572, 576 (Fla. 1956) the distinction was not explored, but in *State v. Halifax Hospital Dist.*, 159 So. 2d 231 (Fla. 1963) the court opined that the new language "was much more restrictive." *Id.* at 234.

156. *State ex rel. Ginsberg v. Dreka*, 185 So. 616, 617 (Fla. 1938).

operation of the government the amount of which is measured by the budget adopted, the assessed valuation of taxable property and the levy (usually in mills) against the taxable property sufficient to produce the amount necessary to meet the budget. The ad valorem tax on a particular parcel is apt to vary from year to year and it will fluctuate annually in proportion to changes in assessed valuation or the amount of the millage.

An "assessment for special benefits" on the other hand is customarily a fixed amount assessed against a particular parcel of land arrived at by totaling the cost of a public improvement and apportioning it against abutting property specially benefited usually on a front foot or acreage basis without regard to ad valorem valuation of the land. While it is most often payable in annual installments, the amount of such installments is usually fixed at the time the initial levy is made and they do not fluctuate from year to year as the result of changes in ad valorem valuation or increases in the cost of maintaining the improvement.¹⁵⁷

Therefore, it was held that a financing device designed to retire improvement bonds, to pay interest and to operate the improvements was invalid because it was not an "assessment for special benefits" and yet had been specifically imposed on homesteads.¹⁵⁸

The federal income tax law also recognizes the distinction between general taxation and special assessments. Generally, there is a deduction for state and local real property taxes.¹⁵⁹ However, deductions are specifically disallowed for "[t]axes assessed against local benefits of a kind tending to increase the value of the property assessed."¹⁶⁰ This is in keeping with the notion that expenditures which are for improvements to property are capital in nature and may not be deducted.¹⁶¹ A deduction is allowed, however, for that portion of a special assessment which is allocable to interest or maintenance charges since they do not partake of the capital expenditure nature of the special assessment.¹⁶²

For federal income tax purposes, a non-deductible special assess-

157. *Fisher v. Board of County Comm'rs*, 84 So. 2d at 579.

158. *Id. Accord*, *State v. Halifax Hospital Dist.*, 159 So. 2d 231 (Fla. 1963); and *Crowder v. Phillips*, 146 Fla. 428, *aff'd on rehearing*, 1 So. 2d 629 (Fla. 1941).

159. I.R.C. § 164(a)(1).

160. *Id.* § 164(c)(1); Treas. Reg. § 1.164-4.

161. I.R.C. § 263; *Noble v. Commissioner*, 70 T.C. 916 (1978). However, an assessment has been held to be deductible upon a finding that it was for the purpose of repairing and resurfacing streets, not to widen or lengthen them. *First Nat'l Bank of Enid v. Hinds*, 48 A.F.T.R. 1982 (W.D. Okla. 1955).

162. I.R.C. § 164(c)(1); Treas. Reg. § 1.164-4(b).

ment is added to the basis of the benefited property.¹⁶³ However, even if the property is otherwise subject to the allowance for depreciation, the expenditure may not be recovered by that means.¹⁶⁴ The depreciation deduction is authorized with reference to property which is "used in" the taxpayer's trade or business.¹⁶⁵ While a special assessment is an improvement which has benefited the taxpayer's property, it does so only indirectly. For example, while paving a street in front of the business premises of a taxpayer may increase the utility and market value of that business premises thereby benefiting the taxpayer's property, the paved street does not become part of the business premises.¹⁶⁶ Further, the taxpayer must have some economic ownership of the property with respect to which a depreciation deduction is being sought¹⁶⁷ and, of course, he would have none over the now-paved public street. As it has been succinctly stated:

A taxpayer upon whom a special assessment is levied for the construction of a pavement has no peculiar financial interest in that pavement. It is as much the property of the public and wholly so as is any public building. . . . It is not the theory of special assessments that the taxpayer acquires in compensation for what he has paid a special interest in that which is constructed. The theory is that he is compensated by a value added to what he already had. The increased value of his property will diminish as the value of the pavement decreases from exhaustion, wear, and tear, but the increase in value which the taxpayer has received, while it diminishes, does not diminish by reason of its exhaustion, wear and tear, but by reason of the exhaustion, wear and tear of property in which the taxpayer has no special pecuniary interest and on account of whose exhaustion, wear and tear the taxpayer is entitled to no deduction.¹⁶⁸

163. *National Lumber & Tie Co. v. Commissioner*, 90 F.2d 216 (8th Cir. 1937). See BNA Tax Management Portfolio 62-5th, "Depreciation—Basis, Useful Life, Salvage," A-31 (1980).

164. *F.M. Hubbell Son & Co. v. Burnet*, 51 F.2d 644 (8th Cir. 1931). See BNA Tax Management Portfolio 24-4th, "State, Local and Federal Taxes," A-6 (1979).

165. I.R.C. § 167.

166. *F.M. Hubbell Son & Co. v. Burnet*, 51 F.2d at 645.

167. *Weiss v. Wiener*, 279 U.S. 333, 337 (1929).

168. *F.M. Hubbell Son & Co. v. Burnet*, 51 F.2d at 645.

C. *Ad Valorem Taxes*

1. *Public Purpose*

Special districts are constitutionally authorized to levy ad valorem taxes, and other types of taxes if authorized to do so by general law.¹⁶⁹ This second grant of authority has not been implemented by the Legislature, therefore discussion of the taxing power of special districts will focus exclusively on ad valorem taxation.

The fundamental principle underlying the power to tax is that because it is derived from the inherent sovereign power of the state it may be properly exercised only for a public purpose.¹⁷⁰ The purpose of the tax may be to raise revenue, or it may have a regulatory aspect, or both.¹⁷¹ The concept of a public purpose is broad and is generally held to be present whenever there is a promotion of the public health, safety, morals, welfare, security, prosperity and contentment of all the inhabitants or residents within a given jurisdiction.¹⁷² What is prohibited is a tax that is levied for merely private purposes.¹⁷³ This does not mean, however, that some private property may not receive some benefit greater than that received by other private property, if the private benefit is incidental to the public purpose served.¹⁷⁴ Conversely, the incidental advantage to the public which might result from public aid to a private project does not make it a public purpose.¹⁷⁵

The question of what is or is not a public purpose is a legal ques-

169. FLA. CONST. art. VII, § 9(a).

170. *Burnett v. Greene*, 122 So. 570, 577 (Fla. 1929), *rev'd on other grounds*, 144 So. 205 (Fla. 1932); *Getzen v. Sumter County*, 103 So. 104, 106 (Fla. 1925). Reliance has also been placed on the concept that if the tax were not levied for a public purpose, it would constitute the taking of private property without just compensation, in violation of the United States and Florida Constitutions. U.S. CONST. art. X, § 6(a). See *State ex rel. Davis v. City of Stuart*, 120 So. 335 (Fla. 1929).

171. *Gundling v. Chicago*, 177 U.S. 183, 189 (1900); *Jerome H. Sheip Co. v. Amos*, 130 So. 699, 705 (Fla. 1930).

172. *Lott v. City of Orlando*, 196 So. 313, 315 (Fla. 1939); *C.V. Floyd Fruit Co. v. Florida Citrus Comm'n*, 175 So. 248, 253 (Fla. 1937).

173. See *Green v. Frazier*, 253 U.S. 233 (1920); *City of Daytona Beach v. King*, 181 So. 1, 5 (Fla. 1938); *Stockton v. Powell*, 10 So. 688, 690 (Fla. 1892). The Florida Constitution echoes this sentiment by prohibiting all state and local governmental entities from lending or using their taxing power to aid any corporation, association, partnership or person, with certain enumerated exceptions which have a "public purpose" flavor such as electrical energy generating, transmission facilities or airports. FLA. CONST. art. VII, § 10.

174. *Brandes v. City of Deerfield Beach*, 186 So. 2d 6, 12 (Fla. 1966).

175. *Id.*; *City of Daytona Beach v. King*, 181 So. at 5.

tion.¹⁷⁶ Nonetheless, the judiciary has shown a large degree of deference to a legislative declaration of public purpose,¹⁷⁷ considering such a declaration to be persuasive, but not conclusive.¹⁷⁸

2. Benefits

An essential element of the public purpose doctrine is that there must be some demonstrable benefit to the public derived from the tax. Historically, a further refinement of that concept required that the benefits flow primarily to the members of the public subject to the tax.¹⁷⁹ General taxes, as opposed to special assessments, are upheld as a valid exercise of governmental power on the theory that they provide some general benefit to the people resulting from governmental protection to persons and property, as well as services such as roads and schools which have the welfare or protection of all within the jurisdiction taxed as their object.¹⁸⁰ There exists, in effect, a presumption that benefits of a general nature flow from the exercise of the general taxing power of a state,¹⁸¹ municipality,¹⁸² county,¹⁸³ school district,¹⁸⁴ or special district.¹⁸⁵ However, the presumption is not conclusive. If the tax is imposed to provide financing for a particular public facility, not for ordinary governmental purposes or to conserve the public safety, peace, health or morals, then property subject to the tax must be benefited in some substantial or appreciable way.¹⁸⁶ If the tax is levied by a local governmental entity, such as a municipality, for general governmental purposes, the standard is less rigid; yet such a tax, although general in nature, is also *local*. Thus including property within the jurisdiction of a municipality or a special district and subjecting it to the general ad valorem taxing power of the jurisdiction is improper if the land is entirely beyond the range of the local benefits and could not conceivably be benefited.¹⁸⁷

176. *City of Daytona Beach v. King*, 181 So. at 5.

177. *State v. Reedy Creek Improvement Dist.*, 216 So. 2d 202, 205 (Fla. 1968).

178. *State v. Town of North Miami*, 59 So. 2d 779, 785 (Fla. 1952).

179. *State ex rel. Davis v. City of Stuart*, 120 So. 335, 348 (Fla. 1929).

180. *Blake v. City of Tampa*, 156 So. 97, 99 (Fla. 1934).

181. 120 So. at 349.

182. *Id.*

183. *Dressel v. Dade County*, 219 So. 2d 716 (Fla. 3d Dist. Ct. App. 1969), *aff'd*, 226 So. 2d 402 (Fla. 1969).

184. *Malounek v. Highfill*, 131 So. 313 (Fla. 1930).

185. *Tucker v. Underdown*, 356 So. 2d 251, 253 (Fla. 1978).

186. *Consolidated Land Co. v. Tyler*, 101 So. 280, 282 (Fla. 1924).

187. 120 So. at 348. *See also City of Winter Haven v. A.M. Klemm & Son*, 192 So. 646,

A recent decision of the Florida Supreme Court has brought the efficacy of the benefit doctrine into question. At issue in *Tucker v. Underdown*¹⁸⁸ was the validity of county ordinances which, pursuant to general law authorization,¹⁸⁹ had created six special districts.¹⁹⁰ Five of the districts were to provide the municipal service of street lighting in geographical areas embracing less than the entire unincorporated area of the county; the sixth was to provide a solid waste disposal facility for the entire unincorporated area of the county.¹⁹¹ The plaintiffs, owners of real property in the special districts, asserted that the districts were invalid, *inter alia*, because much of the property included within the various districts was "not benefited in a real or substantial way by the services provided."¹⁹² The court made no analysis of whether the proposed tax levies were for providing "ordinary governmental purposes, or to conserve the public safety, peace, health, . . . [or] for a public facility."¹⁹³ The answer to the plaintiffs' contention was simply that because "the governing constitutional provisions and statutes require no consideration of direct 'benefit' as a basis for taxation . . . no benefit-tax nexus is otherwise required."¹⁹⁴ A footnote to the opinion which followed immediately after the above quoted passage stated "We do not address appellants' assertion that the record does not support a factual finding of benefit to certain taxpayers in the several municipal service taxing units. A finding one way or the other on this point is simply irrelevant to the proceeding."¹⁹⁵

Curiously, the only authority cited by the *Tucker* court for its holding that the benefit doctrine is irrelevant was *Dressler v. Dade County*.¹⁹⁶ *Dressler* involved a levy of ad valorem taxes by Dade County for the purpose of providing fire protection. The plaintiffs

651 (Fla. 1939): "[L]ands may [not] be taxed for public municipal purposes when they are not needed for any present, potential or reasonably anticipated lawful municipal purpose and cannot receive any benefit whatever in return for taxation for municipal governmental or public improvement purposes."

188. 356 So. 2d 251.

189. FLA. STAT. §§ 125.01(1)(q), (r); 200.071(3) (1975).

190. The districts were denominated "municipal service taxing or benefit units" by FLA. STAT. § 125.01(1)(q). The validity of this statute was upheld in *Gallant v. Stephens*, 358 So. 2d 536 (Fla. 1978).

191. *Tucker v. Underdown*, 356 So. 2d at 253.

192. *Id.*

193. *Consolidated Land Co. v. Tyler*, 101 So. at 282.

194. 356 So. 2d at 253.

195. *Id.* at n.8.

196. *Dressler v. Dade County*, 219 So. 2d 716.

alleged that because certain municipalities within Dade County furnished their own fire protection, it was improper for the county to collect ad valorem taxes for the same purpose within those municipalities which did not receive any benefit from the county levy.¹⁹⁷ The trial judge, however, whose opinion was adopted by the appellate court, made a finding of fact that a "minor but very significant portion of the County's fire protection budget is expended on certain county-wide services provided to municipalities with organized fire departments and to all other governmental entities within the County."¹⁹⁸ There followed an enumeration of some nine specific services which the county fire protection budget provided countywide. The court thereafter arrived at the conclusion of law that property within the relevant municipalities received *lesser* benefits from the county fire department than did property in unincorporated areas or municipalities without their own fire departments, and there was therefore an *inequality* in the benefits received.¹⁹⁹ Nonetheless, the levy was sustained on the ground that it was in the nature of a general tax levy:

Since the prevention and control of fire in all parts of the County serves the general good and is a community or governmental purpose, and consistent with the concept of public health, welfare and safety, the Court deems the County's method of taxing all property in the County on an ad valorem basis for the general community benefit to be valid, even if a greater portion of the benefits inure to residents of the unincorporated areas and certain municipalities.²⁰⁰

In short, *Dressler* does not stand for the proposition that there need be no demonstrable benefit in order to support a general tax levy. Indeed, the court went to great lengths to describe the benefits that were provided countywide. It would seem, therefore, that the court's holding in *Tucker* should be confined to the limited circumstances of "municipal service taxing or benefit units,"²⁰¹ which were the peculiar form of special districts before the court.

Municipal service taxing or benefit units were authorized by the Legislature in implementation of, *inter alia*, the provision added to the constitution by the 1968 revision that "[p]roperty situate

197. *Id.* at 717.

198. *Id.* at 718.

199. *Id.* at 719.

200. *Id.* at 720.

201. Authorized and created pursuant to FLA. STAT. § 125.01(1)(q) (1981).

within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas."²⁰² Thus, the law seems still to be that a municipality may not have its boundaries and jurisdiction to levy ad valorem taxes extended to such a degree that it will encompass land which cannot receive any benefit whatever in return for taxation for municipal government.²⁰³ Nor may the boundaries of a special district other than a "municipal service taxing or benefit unit" be extended to cover property which cannot conceivably be benefited.²⁰⁴ However a county, when operating as its *alter ego* in only the unincorporated areas as a "municipal service taxing or benefit unit," may subject property therein to ad valorem taxation for municipal (local) services regardless of benefit or lack thereof.²⁰⁵ Although this seems to be the resting place of the Florida Supreme Court, with its myopic eye on Florida's statutes and constitution, it would seem that circumstances might arise where the lack of benefit is clearly demonstrable. Such a situation may well violate the federal constitutional premise of the benefit doctrine, *viz.*, that a tax in such circumstances would constitute the taking of private property without just compensation.²⁰⁶ A more reasonable approach for a county to take in establishing municipal service taxing or benefit units is to mold them to the portions of the unincorporated areas of the county which reasonably will be benefited by the services or facilities to be provided by the municipal service taxing or benefit unit. Although the Florida courts have sanctioned the establishment of single municipal service taxing or benefit units to provide multiple services or facilities throughout all of the unincorporated area of various counties,²⁰⁷ they have

202. FLA. CONST. art. VIII, § 1(h).

203. *City of Winter Haven v. A.M. Klemm & Son*, 192 So. at 651; *State ex rel. Attorney General v. City of Avon Park*, 149 So. 409, 414 (Fla. 1933). See *supra* note 187 and accompanying text.

204. *State ex rel. Davis v. City of Stuart*, 120 So. at 348.

205. *Tucker v. Underdown*, 356 So. 2d 251; *accord Hudson Pulp & Paper Corp. v. County of Volusia*, 348 So. 2d 44 (Fla. 1st Dist. Ct. App. 1977).

206. *State ex rel. Davis v. City of Stuart*, 120 So. at 350; *State ex rel. Attorney General v. City of Avon Park*, 149 So. at 415-16; U.S. CONST. amend. V. But see *Hudson Pulp & Paper Corp. v. County of Volusia*, 348 So. 2d 44.

207. *Tucker v. Underdown*, 356 So. 2d 251 (a municipal service taxing unit to provide solid waste disposal encompassed the entire unincorporated area of Broward County); *Gallant v. Stephens*, 358 So. 2d 536 (a single municipal service taxing unit to provide road repair, fire protection, law enforcement, recreation, garbage collection and disposal, and sewage collection encompassed the entire unincorporated area of Pinellas County); *Hudson Pulp & Paper Corp. v. County of Volusia*, 348 So. 2d 44 (a single municipal service taxing unit to provide for the maintenance, resurfacing and construction of roads, municipal-type

done so without a careful analysis of the relevant principals of organic law.

The concept of establishing some nexus between property located within municipalities which is subject to county ad valorem taxation and benefits returned thereto was introduced to the Florida Constitution with the 1968 revision in an attempt to alleviate what the drafters perceived as "double taxation."²⁰⁸ The constitutional proscription against taxing property located within a municipality for services rendered by the county "exclusively" for the benefit of those in the unincorporated areas was interpreted in an early decision to prohibit taxation by the county only where "no real or substantial benefit" flowed to the property within the municipality from those services.²⁰⁹

There have been two other important decisions construing this provision of the Florida Constitution. In 1976 the Florida Supreme Court held that the provisions of article VIII § 1(h) of the Florida Constitution are self-executing.²¹⁰ "The mandate against city taxation for exclusive county activities is absolute and unequivocal,"²¹¹ and therefore it is not necessary for the Legislature to enumerate various services which might be within the purview of the provision, or otherwise clarify its scope. The case was remanded to the trial court with directions for that court to "exercise its inherent equitable powers to fashion a suitable remedy."²¹² In 1978 the provision was construed to apply only to ad valorem property taxes.²¹³

police patrol and service, water supply and distribution, sewerage collection and treatment, solid waste collection, and fire protection encompassed the entire unincorporated area of Volusia County).

208. *City of St. Petersburg v. Briley, Wild & Associates, Inc.*, 239 So. 2d at 822.

209. *Id.* at 823. *See supra* note 89. In *Alsdorf v. Broward County*, 373 So. 2d 695 (Fla. 4th Dist. Ct. App. 1979) the appellate court upheld a determination of the trial judge that a countywide public library system provided real and substantial benefits to all county residents, including those residing in a municipality which had its own public library system. The financing of Volusia County's public library system by countywide ad valorem taxation was upheld on similar reasoning in *City of Ormond Beach v. County of Volusia*, 383 So. 2d 671 (Fla. 5th Dist. Ct. App. 1980). Likewise, the levy of countywide ad valorem taxes for the construction and repair of roads and canals in the unincorporated areas of a county was held to provide sufficient benefits to municipal residents to pass the *Briley* test in *Burke v. Charlotte County*, 286 So. 2d 199 (Fla. 1973).

210. *Alsdorf v. Broward County*, 333 So. 2d 457 (Fla. 1976).

211. *Id.* at 459.

212. *Id.* at 460.

213. *Manatee County v. Town of Longboat Key*, 365 So. 2d 143, 146 (Fla. 1978). The court recognized the conundrum it had created:

We hold that Article VIII, Section 1(h) applies only to property taxation. We are aware of the possibility that with this holding, counties may use revenues not derived from property taxation exclusively for projects benefiting residents and

The role of municipal service taxing or benefit units and other special districts in supplying an avenue for relief from "double taxation" and compliance with article VIII, § 1(h) is expected to be a central one.²¹⁴

3. Uniformity

The Florida Constitution requires that "[a]ll ad valorem taxation shall be at a uniform rate within each taxing unit."²¹⁵ The predecessor to this provision provided that "[t]he Legislature shall provide for a uniform and equal rate of taxation."²¹⁶ The removal of the "and equal" phrase is not thought to have repealed the equality in taxation concept as a constitutional requirement, but merely to have replaced and clarified it with the "within each taxing unit" language.²¹⁷ The concept of "equality," as it pertains to the levy of ad valorem taxes by special districts, refers to the tax being imposed equally on all like property similarly situated.²¹⁸ Thus, in practice, it involves consideration of whether property subject to the tax has been properly valued,²¹⁹ whether property

property in unincorporated areas causing a serious imbalance in benefits received between county and municipal property owners and residents. The Legislature must address this possibility.

Id. at 148.

214. In order to relieve municipal property from the burden of countywide ad valorem taxation which was found to provide no real or substantial benefit to such property, the trial court ordered the defendant counties to create municipal service taxing units in Sarasota County v. Town of Longboat Key, 375 So. 2d 847 (Fla. 1979) and Manatee County v. Town of Longboat Key, 365 So. 2d 143 (Fla. 1978).

215. FLA. CONST. art. VII, § 2. Ad valorem taxes imposed on intangible personal property are excepted; however, this exception is not pertinent to our consideration of special districts because counties, school districts, municipalities, and special districts are prohibited from levying ad valorem taxes on intangible personal property by article VII, § 9(a), of the Florida Constitution.

216. FLA. CONST. art. IX, § 1 (1885).

217. *Williams v. Jones*, 326 So. 2d 425, 430 (Fla. 1975); citing "Commentary" to Article 7, 26A FLA. STAT. ANN. For a discussion of the 1885 constitutional provision see *State ex rel. Maxwell Hunter, Inc. v. O'Quinn*, 154 So. 166, 168 (Fla. 1934). In *Town of Palm Beach v. City of West Palm Beach*, 55 So. 2d 566 (Fla. 1951), ad valorem taxes to finance a special district encompassing two municipalities were levied at different rates by the two municipalities. The court held this arrangement did not violate the "uniform and equal" requirement so long as each rate was uniformly applied within each municipality.

218. For a discussion of the equality concept, see *infra* notes 235-55 and accompanying text.

219. *Schooley v. Sunset Realty Corp.*, 185 So. 2d 1 (Fla. 2d Dist. Ct. App. 1966). All property is to be assessed at its "just valuation;" however, the Legislature may provide exceptions for the following classifications of property: agricultural land, land used exclusively for non-commercial recreational purposes, tangible personal property held for sale as stock in trade, and livestock. FLA. CONST. art. VII, § 4.

has been improperly omitted from the tax roll²²⁰ or improperly granted exemption from the tax.²²¹ If such conditions are found to exist, they violate the equal protection clause of the constitution.²²²

The uniformity requirement was interpreted to require that the rate of tax levied by a taxing unit be uniform within the unit imposing the tax.²²³ The requirement that taxes be levied uniformly within a taxing unit is in keeping with the concept that taxes levied by a county, for example, must be for a county purpose.²²⁴ Thus, the burden of providing a benefit equally available to all within the county should be borne equally by all within the county.²²⁵

More recently, however, the Florida Supreme Court changed the perspective from which to view the uniformity requirement.²²⁶ At issue was a county plan to create municipal service taxing units within the unincorporated areas of the county and to authorize them to levy ad valorem taxes within the respective unit without referendum approval by the resident electors. The constitutional provision granting counties, municipalities and school districts ad valorem taxing power at a rate not to exceed ten mills for their respective purposes provided the basis on which the referendum issue was raised.²²⁷ This same provision permits special districts to levy ad valorem taxes only when authorized by law, and if so authorized, not to levy in excess of "a millage authorized by law approved by vote of the electors."²²⁸ This issue was resolved by looking to the next sentence in the same section of the constitution: "A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal

220. *Arundel Corp. v. Sproul*, 186 So. 679 (Fla. 1939).

221. *See Lykes Bros., Inc. v. City of Plant City*, 354 So. 2d 878 (Fla. 1978).

222. *E.g., Arundel Corp. v. Sproul*, 186 So. at 681-82.

223. Considering the 1885 Florida Constitution, the court in *State ex rel. Maxwell Hunter, Inc. v. O'Quinn*, 154 So. at 168 held:

The rates of state taxation must be equal and uniform throughout the entire state, though the rates of tax levies for county purposes may be different in the several counties, each county being a separate taxing unit Section 1 of article 9 requires "a uniform and equal rate of taxation" in each taxing unit whether state or county

Accord, Town of Palm Beach v. City of West Palm Beach, 55 So. 2d at 571. *See generally*, T. COOLEY, *THE LAW OF TAXATION* §§ 310-29 (4th ed. 1924).

224. *Amos v. Mathews*, 126 So. 308, 322 (Fla. 1930).

225. *See State ex rel. Milton v. Dickenson*, 44 Fla. 623 (1902) (statute requiring the counties to provide facilities for the state militia, a state purpose, held unconstitutional).

226. *Gallant v. Stephens*, 358 So. 2d 536 (Fla. 1978).

227. FLA. CONST. art. VII, § 9.

228. *Id.* § 9(b).

purposes."²²⁹ The amalgamation of these provisions, the court held, provided a method for allowing counties to impose ad valorem taxes not only for county services provided, but also for municipal services provided by the county within the unincorporated areas. Thus the ad valorem taxes levied for the municipal service taxing unit were not subject to the referendum requirement.

The effect of the holding in *Gallant* is that a municipal service taxing or benefit unit is not a "special district" as that term is used in article VII, § 9(b).²³⁰ The unit imposing the tax is the county. Having decided that, the court turned its attention to the uniformity requirement. There, in order to be consistent, the court was forced to construe the provision, not by looking at the unit which has the power and is levying the tax to determine whether it is being imposed uniformly within its jurisdiction, but by:

viewing the uniformity clause as applying to the objects of taxation—the subjects within the unit actually being taxed—rather than to the taxing authority itself. [The appellees] suggest that a tax for Pinellas County's municipal taxing service unit is uniform within the "taxing unit"—that is, the unincorporated area—and they support this view by reference to Article VIII, Section 1(h) of the Constitution and our decision in *Alsdorf v. Broward County*. Together these authorities require a lower county-imposed tax rate in municipalities which receive no substantial benefit from the services provided by the tax revenue, thereby destroying uniformity within the county notwithstanding that the tax is "county" imposed.²³¹

Unfortunately, this seems to be an unwarranted extrapolation from the cited *Alsdorf* case. The constitutional provision at issue there²³² was a prohibition against property located within a municipality being subject to ad valorem taxation by a county in order to provide services or facilities which were of no real or substantial benefit to such property. The *Alsdorf* case simply construed the

229. *Id.*

230. Without exploration of the proper definition of a "special district" as that term is used in article VII, § 9(b), and without further elaboration, the court merely observed in a footnote: "Statutes have defined special districts as local units of special government (excluding school districts) created by authority of general or special law for the purpose of performing specialized functions within limited boundaries. §§ 165.031(5) and 218.31(5), FLA. STAT. (1975)." *Gallant v. Stevens*, 358 So. 2d at 540, n.11.

231. *Id.* at 541 (citations omitted).

232. FLA. CONST. art. VIII, § 1(h). See *supra* note 204 and accompanying text.

provision as being self-executing; it did not impose the remedy suggested in *Gallant* of having the county levy ad valorem taxes on a non-uniform basis within the county.²³³ Other alternatives were available which would have provided compliance with both article VIII, § 1(h) and article VII, § 2. For example, the services which did not benefit the municipalities could have been paid for by user fees, or from county tax revenues other than from ad valorem taxation.²³⁴ Alternately, a special district could have been created encompassing the area which would benefit from the services with authorization to levy ad valorem taxes not in excess of a millage approved by a vote of the resident electors.

4. Equality

The concept of equality in ad valorem taxation requires that the tax be levied at the same rate, expressed as a millage or one-hundredth of a cent per dollar of assessed valuation,²³⁵ on all property within the jurisdiction subject to the tax.²³⁶ All property is to be assessed for purposes of ad valorem taxation at its "just valuation."²³⁷ While it is a simple matter to achieve the appearance of

233. 333 So. 2d at 460.

234. See *Manatee County v. Town of Longboat Key*, 365 So. 2d 143, 148 (Fla. 1978); *City of Hialeah Gardens v. Dade County*, 348 So. 2d 1174, 1180 (Fla. 3d Dist. Ct. App. 1977).

235. FLA. STAT. § 200.191(5) (1981) requires that when millage rates are published for the purpose of giving public notice, they must be expressed in terms of dollars and cents per every thousand dollars of assessed property value.

236. *Town of Palm Beach v. City of West Palm Beach*, 55 So. 2d 566, 571 (Fla. 1951). See generally T. COOLEY, *THE LAW OF TAXATION* §§ 290-94 (4th ed. 1924).

237. FLA. CONST. art. VII, § 4. The predecessor of this provision has been construed to equate "just valuation" with "fair market value." This figure is determined as the amount which a purchaser willing but not obliged to buy would pay for property to one willing but not obliged to sell. *Walter v. Schuler*, 176 So. 2d 81, 85-86 (Fla. 1965).

The Legislature has provided property appraisers with a list of eight factors which must be considered in arriving at the just valuation of property:

(1) the present cash value;

(2) "[t]he highest and best use to which the property can be expected to be put in the immediate future and the present use of the property," taking into consideration any governmental moratorium which might restrict or prohibit development or improvement of the property;

(3) its location;

(4) the quantity or size of the property;

(5) its cost and the replacement value of any improvements;

(6) its condition;

(7) the income from the property; and

(8) the net proceeds the owner might derive from the sale of the property.

FLA. STAT. § 193.011 (1981).

The property appraiser must consider each factor in making his assessment, but the

equality by imposing the tax at a single millage rate, equality will be lacking if the various properties subject to the millage rate have not all been assessed at their full fair market values. Property owners within a county have, on occasion, been able to demonstrate that even though the county imposed its ad valorem tax at a single rate, the assessed value of their property was a greater percentage of just value than the assessed value of other property. Therefore, the resulting tax burden had been unequally imposed.²³⁸

In Florida, property is valued, or assessed, for ad valorem tax purposes by the property appraiser for each county.²³⁹ Municipalities located within a county levy their ad valorem taxes on the basis of an assessment roll prepared by the county property appraiser. The tax roll, therefore, reflects the same assessed valuation for any particular parcel as its assessed valuation on the county assessment roll.²⁴⁰ Similarly, school districts²⁴¹ and special districts, including municipal service taxing or benefit units, located within the county, utilize the same assessed values for levying their ad valorem taxes.²⁴² Issues of equality of assessment are usually confined to the integrity of the tax roll of a single county. When a special district encompasses property located in two or more counties, an additional opportunity to prove inequality is provided. Despite the constitutional mandate, it has long been recognized in Florida that the general level of assessed valuations of property, expressed as a percentage of full fair market value, varies from county to county.²⁴³ Some property appraisers have the resources and expertise to do a better job of valuing the property in their counties than others. If a special district has jurisdiction over property located in adjacent counties which have different general

weight accorded to each factor is within his discretion. *Straughn v. Tuck*, 354 So. 2d 368, 371 (Fla. 1977); *Atlantic Int'l Inv. Corp. v. Turner*, 383 So. 2d 919, 921 (Fla. 5th Dist. Ct. App. 1980). Failure to consider one of the factors renders the assessment invalid. *Palm Corp. v. Homer*, 261 So. 2d 822, 823-24 (Fla. 1972).

238. *Southern Bell Tel. & Tel. Co. v. County of Dade*, 275 So. 2d 4 (Fla. 1973); *Dade County v. Salter*, 194 So. 2d 587 (Fla. 1966). For a general discussion of the valuation of property for ad valorem taxation, see 31 FLA. JUR. *Taxation* §§ 334-51 (1974).

239. The constitution provides for the election, for a term of four years, of a property appraiser for each county. *Fla. Const.* art. VIII, § 1(d).

240. FLA. STAT. § 193.116(1) (1981). Likewise, the county tax collector is charged with the duty of collecting all ad valorem taxes for municipalities within his county. *Id.* § 193.116(2).

241. FLA. STAT. §§ 200.065, 237.091 (1981).

242. *Id.* §§ 193.114, 200.011.

243. See *Spooner v. Askew*, 345 So. 2d 1055 (Fla. 1976); *District School Bd. v. Askew*, 278 So. 2d 272 (Fla. 1973).

levels of assessment, then property located in the counties would bear an unequal tax burden.²⁴⁴ This issue was raised in *Dickinson v. Bell*, where the plaintiffs sought to prevent the approval of the assessment rolls of the counties encompassed by the Central and South Florida Flood Control District because of unequal valuations of property among the counties.²⁴⁵ The district court affirmed the trial court's ruling that the Comptroller failed to satisfactorily supervise the preparation of assessment rolls by the property appraisers in order to ensure uniform and equal valuation. The Comptroller later was ordered to make his own determination of the values of property of the same classification as the plaintiffs' (grazing lands) and to institute proceedings to require the property appraisers to properly assess the land.²⁴⁶

244. For example, if one county had a general level of assessment at 70% of just value, and the other county had an assesment at 90%, and the special district imposed a tax of one mill, property in the first county with a fair market value of \$10,000 would owe a tax of \$7; property in the second county with the same fair market value would owe a tax of \$9. The example assumes the assessed value of the property is fully taxable with no exemptions applicable.

245. 214 So. 2d 24 (Fla. 1st Dist. Ct. App. 1968). See also *Burns v. Butscher*, 187 So. 2d 594, 596 (Fla. 1966).

246. *Department of Revenue v. Bell*, 227 So. 2d 684, 685 (Fla. 1st Dist. Ct. App. 1969).

In *Straughn v. GAC Properties, Inc.*, 360 So. 2d 385 (Fla. 1978), the taxpayer alleged inequality as a result of portions of a contiguous parcel of property which was assessed at \$300 per lot in one county and at \$560 per lot in an adjacent county. The court held the trial court had properly dismissed the cause of action against the Department of Revenue to compel the equalization of assessments between the two counties. Mr. Justice England stated:

The *Spooner* [*v. Askew*, 345 So. 2d 1055 (Fla. 1976)] and *Armstrong* [*v. State ex rel. Beaty*, 69 So. 2d 319 (Fla. 1954)] decisions quite clearly state that inter-county assessment uniformity is not required by the Constitution, and that variations even between adjacent counties are not a basis for lowering tax assessments which are neither greater than 100% of fair market value nor unequally or improperly determined in relation to other properties within the same county. These principles flow from the constitutional directive that Florida's counties each have their own tax appraiser.

Id. at 386 (footnotes omitted).

Neither the *Spooner* nor the *Armstrong* case focused on the question of inequality in the context of a multicounty district. Indeed, the court in *Armstrong* took great care to analyze the equal protection arguments with an eye on the taxing jurisdiction:

If, within a taxing district or within a county, the method of assessment is equal and uniform as to every piece of property in the district or county, and every property owner is treated alike, there is no inequality of assessment as to separate pieces of property in the district or county justifying equalization. The fact that while unimproved land in Franklin County may be assessed by a particular method in Franklin County, but is equal and uniform as to every piece of property and everyone is treated alike in that county, could have no effect upon a different method of assessment in Madison County, where the method employed in Madison County is equal and uniform as to every piece of property in Madison

In *Dade County v. Salter*,²⁴⁷ the first of two reported decisions to address the issue of intracounty inequality, the plaintiff alleged that his property had been assessed at 100% of full cash value while "nearby property," had been assessed at only 75%.²⁴⁸ The Florida Supreme Court's decision concerned the procedural point only, holding that the plaintiff's complaint had stated a cause of action even though the plaintiff had not alleged that his property had been assessed in excess of full fair market value.²⁴⁹ The opinion quoted with approval, however, from a United States Supreme Court decision which addressed the question of the proper remedy:

This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based upon the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.²⁵⁰

In the second case, *Southern Bell Telephone and Telegraph Co. v. County of Dade*,²⁵¹ the plaintiff alleged that its property had been assessed at full fair market value, but the property appraiser had generally assessed real property at a ratio of approximately eighty percent of its market value and had assessed tangible personal property at a level "substantially lower" than plaintiff's property.²⁵² The court noted the two competing constitutional principles involved: the right to equal protection which is infringed if a taxpayer's property is assessed at a percentage of full fair market value substantially higher than the percentage at which other property in the county is generally assessed and the constitutional

County. But, of course, all assessments must be made at full cash value as required by the statute. Sec. 193.11, Florida Statutes 1951 and F.S.A.

. . . We still have the principle that the method of assessment shall be equal and uniform for each piece of property in the taxing district. In this case the taxing district is Madison County.

69 So. 2d at 321.

247. 194 So. 2d 587 (Fla. 1966).

248. *Id.* at 589.

249. *Id.* at 591-92.

250. *Id.* at 591, quoting *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923).

251. *Southern Bell Tel. & Tel. Co. v. County of Dade*, 275 So. 2d 4 (Fla. 1973).

252. *Id.* at 5.

mandate to property appraisers to assess all property at its full fair market value.²⁵³ The court also recognized the impracticality of providing relief by requiring the plaintiffs to institute and prosecute proceedings against the property appraiser to require him to raise the assessed valuations of all other properties in the county to the same level as the plaintiff's property.²⁵⁴ In remanding the case to the trial judge for consideration of the proper formulation of relief, the court seemed to indicate that both constitutional principles could be adhered to by dealing with the tax liability imposed on the plaintiff's property, rather than tinkering with the assessed valuations of property within the county:

This question [of relief] is admittedly complicated, i.e., determining petitioner's fair share of the tax burden based upon a calculation of the ad valorem taxes petitioner would have been required to pay if the tax roll had been at full value, considering [sic] the established level of real property assessment and considering the level at which personal property had been assessed.²⁵⁵

5. Millage Limitations

A special district (other than a municipal service taxing or benefit unit) which has been granted the power to levy ad valorem taxes may do so at a rate not in excess of a millage which has been authorized by law and approved by a vote of the electors.²⁵⁶ A municipal service taxing or benefit unit may levy ad valorem taxes at a rate not to exceed the constitutional limit fixed for municipal purposes of ten mills and may do so without a referendum

253. *Id.* at 7-8.

254. *Id.* at 8, quoting *Dade County v. Salter*, 194 So. 2d at 591.

255. *Id.* at 10.

256. FLA. CONST. art. VII, § 9(b). Section 9(b) further provides that it is to be "by vote of the electors who are owners of freeholds therein not wholly exempt from taxation." The freeholder limitation was held unconstitutional in *Fair v. Fair*, 317 F. Supp. 859, 860 (M.D. Fla. 1970), on the authority of *City of Phoenix v. Kolodziejcki*, 399 U.S. 204 (1970). The freeholder provision, however, is separable from the remainder of the section, which is valid. *Tornillo v. Dade County School Bd.*, 458 F.2d 194 (5th Cir. 1972). See also *Op. Att'y Gen. Fla. 072-333* (1972). The constitutional millage limits and the referendum requirement for special district millages were new to the 1968 revision of the constitution. Special districts which were levying ad valorem taxes pursuant to law which had not been approved in a referendum were allowed to continue levying such taxes under the authority of article XII, § 15 of the Florida Constitution. Nor would the ad valorem taxing power of a special district be subject to the ten mill cap imposed for "county purposes." *Op. Att'y Gen. Fla. 069-71* (1969). Regarding millage limitations generally, see 31 FLA. JUR. *Taxation* §§ 238-45 (1974).

election.²⁵⁷

All governmental entities, including special districts, must, in the exercise of their taxing powers, levy taxes in accordance with law.²⁵⁸ Chapter 200 of the Florida Statutes contains some important provisions pertaining to the millage which may be levied by a special district.²⁵⁹ To reiterate, a different treatment is provided for municipal service taxing or benefit units. A municipal service taxing or benefit unit may levy an ad valorem tax at a rate not to exceed ten mills regardless of the rate of ad valorem taxation imposed by the county for county purposes.²⁶⁰ On the other hand, all other special districts²⁶¹ are limited to a millage which, when added to the millage levied by the county, cannot exceed ten mills.²⁶²

In the event a county and the special districts located within it desire to levy ad valorem taxes in the aggregate in excess of ten mills, the county's budget commission or board if it has one, or the board of county commissioners otherwise, is vested with the authority to apportion the permissible ten mills among the compet-

257. FLA. STAT. § 125.01(1)(q) (1981); FLA. CONST. art. VII, § 9(b); *Gallant v. Stephens*, 358 So. 2d 536.

258. FLA. CONST. art. VII, § 1(a).

259. FLA. STAT. § 200.111 (1981):

The term "district" is defined to mean special districts having the power to levy taxes or require the levy of taxes, including but not limited to boards, commissions, authorities and agencies having authority to levy taxes or require the levy of taxes but shall not include special school districts or multicounty districts.

260. The municipal service taxing or benefit unit is viewed as being subject not to the millage limit for special districts contained in article VII, § 9(b) of the state constitution, but to the millage limit for municipal purposes (ten mills). *Gallant v. Stephens*, 358 So. 2d 536. Section 200.071(3) of the Florida Statutes echoes this sentiment. The validity of the statutory provision was upheld in *Tucker v. Underdown*, 356 So. 2d 251.

261. Other than special school districts or multicounty districts. FLA. STAT. § 200.111 (1981). See Op. Att'y Gen. Fla. 077-105 (1977).

262. FLA. STAT. § 200.071(1) (1981):

Except as otherwise provided herein, no aggregate ad valorem tax millage shall be levied against real and tangible personal property by counties and districts as herein defined in excess of 10 mills on the dollar of assessed value, except for special benefits and debt service on obligations issued in connection therewith, and except for that millage authorized in § 9, Art. VII of the State Constitution.

The Attorney General opined that this provision would apply to ad valorem taxes levied by a countywide special hospital district created by a special act even though the act specifically provided it was not to be so limited and the act was approved in a referendum. Op. Att'y Gen. Fla. 072-340 (1972).

Article VII, § 9(b) limits the rate of ad valorem taxation, other than for the payment of bonds or for periods of not more than two years when approved by vote of the electors, for "all county purposes" to ten mills. In *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130 (Fla. 1970), this provision was held to embrace home-rule and consolidated governments as well as traditional counties.

ing taxing entities.²⁶³ In addition, the aggregate ten mill limitation may be increased for up to two years if approved in a referendum election.²⁶⁴

In order to facilitate the consolidation of county and municipal governments,²⁶⁵ authorization is granted to a county providing municipal services within a municipality to levy more than ten, but not to exceed twenty, mills, with a corresponding and equal decrease in the municipality's ten mill limit.²⁶⁶ Likewise, if the municipality is assuming the burden of providing a county service, the municipality's millage limit may be increased with a corresponding decrease in the county's limit.

Finally, if a special district encompasses territory in more than one county, it is excluded from the definition of a "district" for purposes of chapter 200,²⁶⁷ and thus from the aggregate ten mill rule discussed above to which intracounty special districts are subject.²⁶⁸ Ad valorem taxes levied by such multicounty districts are to be reported by the respective county areas in accordance with the procedures of chapter 200.²⁶⁹

D. Bonds and Certificates of Indebtedness

Like other governmental entities, a special district may incur bonded indebtedness provided the Legislature has expressly or impliedly authorized it to do so²⁷⁰ and has limited the maximum amount of such indebtedness.²⁷¹ Indeed, legislative authorization to issue bonds has itself been used to imply the grant of taxing power to the extent necessary to pay the interest on the bonds and to create a sinking fund for the repayment of the principal.²⁷² De-

263. FLA. STAT. § 200.071(2) (1981).

264. FLA. STAT. § 200.091 (1981):

The millage authorized to be levied in § 200.071 for county purposes, including districts therein, may be increased for periods not exceeding 2 years, provided such levy has been approved by a majority of those voting in an election participated in only by the qualified electors of the county or district who pay taxes on real or personal property.

265. Consolidation of the government of a county and one or more municipalities located therein is authorized by FLA. CONST. art. VIII, § 3.

266. FLA. STAT. § 200.141 (1981).

267. *Id.* § 200.111.

268. *Id.* § 200.071(1). See *supra* note 262 and accompanying text.

269. FLA. STAT. § 200.191(4)(c) (1981).

270. State *ex rel.* Harrington v. City of Pompano, 188 So. 610, 620 (Fla. 1938).

271. State *ex rel.* Atlantic—Gulf Special Rd. and Bridge Dist. v. Bass, 118 So. 212, 214 (Fla. 1928).

272. *Id.*; State v. Ft. Pierce Inlet Dist., 115 So. 547 (1927); accord State v. Special Tax

pending upon the special district's legislative grant of authority and the terms of the bond issue itself, the indebtedness reflected in bonds sold by a special district may be repaid from general revenues of the district, including ad valorem taxation or special assessments. Alternatively, repayment may be restricted to revenue generated by the district from providing facilities or services.²⁷³

Since 1930²⁷⁴ the Florida Constitution has required voter approval prior to the issuance of bonds by a special district. The provision currently in effect provides:

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.²⁷⁵

The converse of the above prohibition is that such bonds or certificates of indebtedness may be issued without voter referendum if they are to be repaid from sources other than ad valorem taxes.²⁷⁶

The statutory authority for a special district to issue bonds was often contained in the enabling legislation which authorized the creation of the special district, and thus was not uniform. The Legislature has now provided a uniform procedure which may be followed for the validation of bonds issued by special districts and other governmental entities.²⁷⁷ A proceeding may be brought by a special district pursuant to the bond validation law in circuit court for the purpose of determining the authority of the district to incur the bonded indebtedness, whether all essential proceedings

School Dist. No. 5 of Dade County, 144 So. 356, 362 (Fla. 1932) (refunding bonds).

273. See 26 FLA. JUR., *Public Securities and Obligations* § 168 (1959).

274. FLA. CONST. art. IX, § 6 (1885), as amended.

275. FLA. CONST. art. VII, § 12. The freeholder requirement is the same as in article VII, § 9(b) discussed *supra* in note 256, and for the same reason is of doubtful validity.

276. *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978); *Lake Howell Water & Reclamation Dist. v. State*, 268 So. 2d 897 (Fla. 1972); *State v. Board of Pub. Instruction*, 214 So. 2d 723, 724 (Fla. 1968); *Op. Att'y Gen. Fla. 078-110* (1978).

277. FLA. STAT. ch. 75 (1981).

prior to the issuance of the bonds have been taken,²⁷⁸ and generally to resolve with finality any issues which might later call into question the validity of the bonds to be issued.²⁷⁹ However, before validation proceedings may be instituted pursuant to the procedures of this general law, the special district must either hold an election to authorize the issuance of the subject bonds or certificates of indebtedness and show that the election was in favor of their issuance, or, when permitted by law, adopt an ordinance or resolution providing for the issuance of the debt obligations in accordance with law.²⁸⁰

The other recourse for validating bonds or certificates of indebtedness is *post hoc* curative legislation. Where the Legislature has the power to authorize the issuance of the debt obligations in the first instance, but some circumstance such as an error in the procedure of their issuance has brought their validity into question, subsequent legislation may be enacted to cure the defect and make the obligations valid and enforceable.²⁸¹

V. EXPANSION OR CONTRACTION, CONSOLIDATION AND DISSOLUTION

The Legislature has not prescribed any general law procedures to be followed for expanding or contracting the geographical jurisdiction of a special district.²⁸² Presumably, the same procedures applicable to the creation of a special district in the first instance should be followed, *viz.*, "by special act of the Legislature or by ordinance of a county or municipal governing body having jurisdiction over the area affected."²⁸³ The important issue which arises with respect to the ad valorem taxing power of a special district whose boundaries have been changed (either to include territory previously excluded or to exclude previously included territory, or both) is to what extent is it proper to subject the property in the affected area to the district's ad valorem tax levy.²⁸⁴ Generally, a

278. *Id.* § 75.04.

279. *Id.* § 75.09. The procedures of this chapter are exclusive; a suit for declaratory judgment is not appropriate. *Bessemer Properties, Inc. v. City of Opalocka*, 74 So. 2d 296, 298 (Fla. 1954).

280. FLA. STAT. § 75.03 (1981).

281. *Middleton v. St. Augustine*, 29 So. 421 (Fla. 1900).

282. The Municipal Annexation or Contraction Act, provides general law standards and procedures for adjusting the boundaries of municipalities, superseding conflicting provisions on the subject contained in any special act or municipal charter in effect on October 1, 1974. It does not apply to special districts. FLA. STAT. ch. 171 (1981).

283. FLA. STAT. § 165.041(2) (1981).

284. M. POCK, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA

special district has the power to impose ad valorem taxes on property which was within its territorial jurisdiction as of January 1 of the year in question; property added to that jurisdiction after January 1 would not be subject to that year's ad valorem levy.²⁸⁵ Conversely, property which was excluded from a district would remain subject to the levy for the year of exclusion, but not thereafter.²⁸⁶

If a special district is to be merged with another special district, or with a municipality or county, or if it is to be dissolved, the general law provisions of the Formation of Local Governments Act²⁸⁷ must be followed. Merger is accomplished by the adoption of concurrent ordinances of affected municipalities or counties, and resolution of the governing body of each affected special district.²⁸⁸ The merger procedures may be initiated either by the governing bodies of the affected units, or by petition of ten percent of the qualified voters of the area.²⁸⁹ If a special district is merged with a municipality, the municipality receives title to all property and assumes all indebtedness of the district.²⁹⁰ If two or more special districts are merged, the surviving entity likewise takes title to all property of and assumes all debts of the merged district. The merger agreement also must provide for the proper determination of the allocation of indebtedness so assumed and the manner of retiring such debt.²⁹¹

The dissolution of a special district may be accomplished either by special act of the Legislature or by ordinance of the district's governing body which has been approved by a vote of the electors.²⁹² Before such a dissolution may take place, however, the county or a municipality must be demonstrably able to provide the

PROBLEMS 160-84 (1962).

285. Op. Att'y Gen. Fla. 071-255 (1971). All ad valorem taxes levied in Florida constitute a first lien on the property against which the taxes are assessed from January 1 of the year in which the taxes are levied. FLA. STAT. § 197.056 (1981). See Op. Att'y Gen. Fla. 075-32 (1975).

286. However, in *State v. Jensen Rd. & Bridge Dist.*, 198 So. 105 (Fla. 1940), the court held that where a special district had sold bonds, pledging ad valorem taxes on all property then within the district in payment therefor, it was proper to levy the taxes on property which was excluded by legislative act from the district subsequent to the sale of the bonds.

287. FLA. STAT. ch. 165 (1981). Its provisions preempt all conflicting provisions of general or special law except in counties operating under a home rule charter which provides for another exclusive method. *Id.* § 165.022.

288. *Id.* § 165.041(4).

289. *Id.* § 165.041(5)(a).

290. *Id.* § 165.071(2).

291. *Id.*

292. *Id.* § 165.051. This section also specifies the details of the election and notice thereof.

services which had been provided by the district and an equitable arrangement must be made with respect to any vested rights of district employees and any bonded indebtedness.²⁹³

Finally, there is a procedure for the involuntary dissolution of inactive special districts. Upon certification to the Secretary of State by the Department of Veterans and Community Affairs that the special district has not had appointed or elected a governing body for the past four years, or has not operated within the two immediately preceding years, and that certain notice provisions have been complied with, the Secretary may issue a proclamation declaring the district inactive.²⁹⁴ If such a special district owes any debt at the time of the proclamation, any of its property or assets become subject to legal process for the payment of the debt.²⁹⁵ After the payment of outstanding debts, any remaining property escheats to the county in which it is located.²⁹⁶ Conversely, if the district's indebtedness exceeds its assets, and it is necessary to levy a tax on the property which had been in the district in order to pay the indebtedness, the county commissioners are authorized to order such tax to be assessed, levied and collected by the same procedures as those concerning county taxes.²⁹⁷ The Governor is to report to the Legislature the special laws authorizing the creation of, or relating only to the powers or duties of, any special district declared inactive, apparently for the purpose of identifying such special acts for legislative repeal.²⁹⁸

VI. CONCLUSION

Special districts with ad valorem taxing power are an integral part of local government in Florida today. They provide a panoply of services, governmental and proprietary, throughout the state. The Legislature has taken some important, positive steps in recent years to provide uniform, exclusive procedures for the creation, modification and dissolution of special districts. These procedures are in harmony with the general trend of providing authority and responsibility at the local level for addressing matters of concern.

293. *Id.* § 165.061(4).

294. *Id.* § 165.052(1).

295. *Id.* § 165.052(3).

296. *Id.*

297. *Id.*

298. *Id.* § 165.052(4). Repeal is facilitated by providing that the Secretary of State's "proclamation of inactive status shall be sufficient notice as required by s. 10, Art. III of the State Constitution to authorize the Legislature to repeal any special laws so reported." *Id.*

Additionally, by requiring that a census of special districts be taken, and by imposing financial disclosure and reporting requirements on special districts, legislative and public oversight has been much improved.

Unfortunately, some important fundamental concepts of tax policy seem to have been brushed aside in the rush to fashion a remedy for the rapidly increasing urbanization of the unincorporated areas of Florida's sixty-seven counties. The concept that a tax imposed for even general governmental purposes must provide some, albeit remote, benefit to the property or persons taxed has hopefully not been entirely discarded, but only overlooked in the passion of the moment. Similarly, the significance of the clarion call of "Taxation Without Representation" will hopefully be more fully appreciated by the Florida Supreme Court when it is next confronted with the issue of property being taxed by a municipal service taxing or benefit unit which encompasses an area of a county in which none of the members of the board of county commissioners resides.