

MEMORANDUM
Office of the Monroe County Attorney

TO: County Commissioners and Aides

THROUGH: Roman Gastesi, County Administrator
Bob Shillinger, County Attorney

FROM: Cynthia L. Hall, Assistant County Attorney

DATE: May 29, 2018

SUBJECT: Steps in Setting Up MSTU and Levy of Taxes for Fishermen's Community Hospital

At its May 16, 2018 meeting (item D-11), the Board of County Commissioners directed County staff to begin the process of setting up a municipal service taxing unit (MSTU) and the levy of ad valorem taxes for the reconstruction of Fishermen's Community Hospital. The purpose of this memo is to outline the steps that would be necessary to set up the MSTU and levy the taxes.

Background

Fishermen's was severely damaged during Hurricane Irma. The permanent hospital has been closed since September 2017. Since that time, the hospital has been operating out of a temporary facility. In February 2018, Baptist Health South, Inc., a not-for-profit corporation and owner of Fishermen's, announced plans for the reconstruction of the facility. The estimated cost of reconstruction is \$40 million. Opening is planned for late 2019.

Even prior to the storm, the hospital had been operating with negative operating cash flow as a result of indigent health care costs.

A contingent of representatives from Baptist Health South has asked that the Monroe County Board of County Commissioners use its authority under F.S. 125.01(1)(q) to set up the MSTU. The MSTU would be used to pay to levy and collect ad valorem taxes for rebuilding of Fishermen's Hospital and indigent health care costs, beginning in November 2019 (fiscal year 2020).

Statutory Authority

Section 125.01(1)(q), Florida Statutes, states that a county has the legal power to establish an MSTU for any of the unincorporated area of the county, for any combination of seventeen purposes, one of which is indigent health care costs, and another of which is "other essential facilities and municipal services . . ." The same subsection further states that the MSTU may include all or part of one or more municipalities, if consent to inclusion is given through adoption of an ordinance by the municipalities involved.

The County has the authority to levy and collect taxes in the MSTU, to expend money, and to issue bonds. F.S. 125.01(1)(r).

Steps to Set Up an MSTU and Levy Taxes

The chronological steps and the timeline to setting up an MSTU are shown below. The steps that are necessary depend, in large part, on the proposed use of the funds – namely, whether the funds will be used to pay for indigent health care costs, or to finance capital construction of the hospital.

1. If the Taxes will be used for indigent health care costs:

No referendum is required for the levy of ad valorem taxes, either for county purposes or the provision of municipal services within a municipal service taxing unit, if the ad valorem taxes will be used for indigent health care costs. (F.S. 125.01(1)(r).)

If no referendum is held, the steps necessary to set up the MSTU and levy and collect taxes are as follows:

Who has responsibility	Step	Approx. timeframe
County	Adopt Resolution A (no referendum, simply supporting the MSTU)	June 2018
County	Adopt ordinance setting up MSTU	July or October 2018
Marathon and Key Colony Beach	Adopt ordinances consenting to inclusion of cities in MSTU	July – September 2018
Monroe County, Baptist Health South	Enter into agreement setting forth terms and conditions (issue bond) ¹	Fall 2018
Monroe County BOCC	Adopt budget for MSTU and levy taxes	Summer- fall 2019

If the County Commissioners wish to have a non-binding referendum, holding the referendum on the August 22, 2018 primary election would allow the County Commissioners, city officials, taxpayers and Fishermen's Hospital to know the wishes of the taxpayers in time to take additional steps, and avoids the overcrowded November 2018 ballot. The voters are the electors living in the proposed area for the MSTU (sometimes called a Taxing District). To place on item on the ballot, the BOCC is required to adopt a resolution containing the ballot language. F.S. 101.161(1). The deadline for adoption of the bond resolution for the August election is June 22, 2018.

¹ The County Attorney's Office will also recommend filing a bond validation complaint to validate the debt. All of the other steps could continue to proceed while the bond validation complaint is being litigated.

If the BOCC desires a non-binding (non-bond) referendum, the following steps would be taken to set up the MSTU and levy and collect the taxes:

Who has responsibility	Step	Approx. timeframe
Monroe County BOCC	Adopt Resolution B authorizing non-binding (non-bond) referendum	June 20, 2018 BOCC meeting
	Non-binding referendum	August 18, 2018 or November 6, 2018
Monroe County	Adopt ordinance setting up MSTU	July or October 2018
Marathon and Key Colony Beach	Adopt ordinances consenting to inclusion of cities in MSTU	July – September 2018
Monroe County, Baptist Health South	Enter into agreement setting forth terms and conditions (i.e., issue bond) ²	Fall 2018
Monroe County BOCC	Adopt budget for MSTU and levy taxes	Summer- fall 2019

2. If the taxes will be used to finance capital reconstruction:

If ad valorem taxes will be used as a pledge of greater than 12 months to finance capital rebuilding of the hospital, then a bond referendum must be held. A County pledge of ad valorem taxes for a period of greater than 12 months to finance a capital projects constitutes a general obligation bond. Article VII, section 12 of the Florida Constitution states that counties, municipalities and other local government entities may issue bonds or certificates of indebtedness, payable from ad valorem taxes and maturing more than 12 months after issuance, for funds that will be used to finance capital projects, only when approved by vote of the electors in the MSTU.³

Both a bond referendum and a non-binding, non-bond referendum require a resolution of the BOCC to approve the ballot language, and request the Supervisor of Elections to place the question on the ballot. The two differences between a bond referendum and a non-bond

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³ Fla. Const., Article VII, § 12:

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.

referendum are (a) the bond referendum is binding, whereas the non-bond referendum may be non-binding, and (b) slight differences in the form of the ballot language, by statute.

The deadline for adoption of the resolution is the same as for the non-binding referendum. If the BOCC wishes to use the August 2018 primary election, the deadline for approval of the resolution with the ballot language is June 22, 2018.

Therefore, if the ad valorem funds are pledged on a multi-year basis to finance the capital project, the steps necessary to set up the MSTU and collect the taxes will be as follows:

Who has responsibility	Step	Approx. timeframe
Monroe County BOCC	Adopt Resolution C, authorizing bond referendum	June 20, 2018 BOCC meeting
	Bond referendum	August 18, 2018 or November 6, 2018
Monroe County	Adopt ordinance setting up MSTU	July or October 2018
Marathon and Key Colony Beach	Adopt ordinances consenting to inclusion of cities in MSTU	July – September 2018
Monroe County, Baptist Health South	Enter into agreement setting forth terms and conditions (i.e., issue bond) ⁴	Fall 2018
Monroe County BOCC	Adopt budget for MSTU and levy taxes	Summer- fall 2019

What will the BOCC be asked to do at the June 20, 2018 BOCC meeting?

At the June 20th meeting, the BOCC will be asked to make a decision regarding the attached referendum resolutions. The four choices are:

1. Decide that ad valorem taxes will be used only to defray indigent health care costs and no referendum is required. In this case, the BOCC would pass Resolution A (no referendum).
2. Decide that ad valorem taxes will be used only to defray indigent health care costs, but elect to hold a non-binding referendum. In this case, the BOCC would pass Resolution B.
3. Decide to make a multi-year pledge of ad valorem taxes to finance capital construction. If this is the choice, the BOCC would adopt Resolution C.
4. Alternatively, the Commission could choose not to go forward with creation of the MSTU or collection of the taxes.

In addition, staff will ask the BOCC to approve the advertising of a public hearing to adopt an ordinance setting up the MSTU. The public hearing will be held in Marathon in July 2018. Staff will also ask for approval to the filing of a bond validation complaint at the appropriate time.

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