

RESOLUTION 94- 70

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA REQUESTING THAT THE UNITED STATES CONGRESS EXEMPT CERTAIN GOVERNMENT REVENUE SOURCES FROM THE OPERATION OF DESIGNATED BANKRUPTCY CODE PROVISIONS; EXCEPT ALL COLLECTION METHODS AVAILABLE TO LOCAL GOVERNMENT FROM BANKRUPTCY AUTOMATIC STAY PROVISIONS; PREVENT CERTAIN BANKRUPTCY CODE PRE- EMPTING OF INTEREST RATES BIDS ON TAX CERTIFICATE SALES; PREVENT THE APPLICATION OF BANKRUPTCY AUTOMATIC STAY PROVISIONS TO LOCAL GOVERNMENT REVENUE SOURCES.

WHEREAS, the Second, Third, and Ninth Circuit Courts of Appeal have applied the automatic stay, contained at 11 U.S.C. Section 362, as prohibiting the perfection of tax liens by local governments for delinquent ad valorem taxes or non ad valorem special assessments on real property which are subject to bankruptcy proceedings; and

WHEREAS, the balancing of policy considerations made by the United States Congress when drafting the Bankruptcy Code of 1978, 11 U.S.C. Section 101-1330, and the interpretations made by the various federal courts have provided greater protection for debtors, as against the interests of creditors and the perceived inequitable bargaining positions held between debtors and creditors, however, there exists serious merit to reconsider this balance in circumstances where a local government is a creditor for unpaid taxes or non ad valorem special assessments; and

WHEREAS, the application of the automatic stay results in great delay to local governments of the receipt of ad valorem

taxes or non ad valorem special assessments and causes severe hardship to the local governments in forecasting and funding local government activities and responsibilities; and

WHEREAS, the application of the automatic stay to ad valorem taxes or non ad valorem special assessments which are validly levied after the filing of a bankruptcy petition and otherwise due and payable may present collection pursuant to the state law provisions contained in Chapter 197, Florida Statutes; and

WHEREAS, various United States District Courts have reduced the interest rates bid for tax certificates sold for unpaid ad valorem taxes or non ad valorem special assessments at public sales pursuant to Section 197.432, Florida Statutes, to artificial market rates of interest by citing 11 U.S. C. Section 1129 (b)(2)(A)(i)(II); and

WHEREAS, the United States District Courts have interpreted 11 U.S. C. Section 363 to authorize the sale of real property which is subject to an ad valorem tax or non ad valorem special assessments delinquency free and clear the appropriate tax lien, with the result that secured tax liens created prior to the filing of a bankruptcy petition are reclassified as priority unsecured loans.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners St. Johns County, State of Florida, urge the United

States Congress to make one or all of the following changes to the Bankruptcy Code of 1978, 11 U.S.C. Section 101-1330:

1. Exempt local government revenue sources, such as ad valorem taxes or non ad valorem special assessments, from the operation of the Bankruptcy Code of 1978, 11 U.S.C. Sections 101-1330; and/or

2. Exempt all collection methods available to local governments under state law from the operation of the automatic stay contained at section 362 of the Bankruptcy Code of 1978 and/or the statutes of any other state which would be negated by the decision of a federal bankruptcy court; and/or

3. Prevent section 1129(b) of the Bankruptcy Code of 1978 from pre-empting the interest rate bid upon tax certificates sold at a public sale pursuant to section 197.432 of the Florida Statutes; and/or

4. Prevent the application of the automatic stay contained at Section 362 of the Bankruptcy Code of 1978 to any and all local government revenue sources, such as ad valorem taxes or non ad valorem special assessments, levied after the filing of the Bankruptcy Petition.

Passed and adopted this 12th day of April, 1994.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Allan Roberts
Its Chair - Allan Roberts

Attest: Carl "Bud" Markel, Clerk

By: Yvonne Carter
Deputy Clerk

