

STORAGE NAME: h1907a.ca

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1907

RELATING TO: County Govt./Ad Val Taxes/Referendum

SPONSOR(S): Representative Posey

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0
 - (2) FINANCE & TAXATION (FRC)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill clarifies that a county is not required to hold a referendum prior to the levy of ad valorem taxes, unless so specified in the county charter.

This bill does not contain a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Constitutional Provisions

Article VII, Section 9 of the Florida Constitution authorizes cities and counties to assess up to ten mills as ad valorem taxation:

Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property; for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills . . .

Article VII, Section 9 (b), Florida Constitution

Charter Counties

Any county not having a chartered form of government may locally initiate and adopt a home rule charter pursuant to the provisions of sections 125.60-125.64, F.S. Such charter must be adopted by a majority vote of the qualified electors of the county.

Counties operating under charters have all the powers of "local self-government not inconsistent with general law, or with special law approved by vote of the electors." Chapter 125, Florida Statutes, enumerates the powers and duties of charter counties. Part IV of chapter 125, Florida Statutes, provides a method for counties to adopt charters.

Counties not operating under charters have the power of "self-government as is provided by general or special law."

Some counties have special prohibitions. For example, sections 9.09 and 9.10 of the Hillsborough County Charter prohibit creation of a local planning agency or a local environmental protection commission "except by special act, not approved by referendum."

To date, sixteen counties in Florida are charter counties. The following description lists charter counties with the year in which their charters took effect: Dade (1957), Duval (1967), Sarasota (1971), Volusia (1971), Broward (1975), Pinellas (1980), Hillsborough

(1983), Palm Beach (1985), Charlotte (1986), Orange (1986), Alachua (1987), Seminole (1989), Clay (1989), Osceola (1992), Brevard (1994), and Polk (1999).

Section 125.01, F.S., provides powers, duties, and limitations on county government. Section 125.01 (1) (r), F.S., provides the following: "There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit."

Brevard County Charter

The following provisions are found in the charter for Brevard County:

1.4 Special powers and duties of county

1.4.1 Tax millage

Subject to the reserved powers of the people under Article 5 of this Charter, the county shall have all necessary powers to levy taxes and to accomplish county and municipal purposes. Property situated within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of property or residents within municipal boundaries. To this end the Board of County Commissioners may by ordinance create districts for the purpose of levying ad valorem taxes and special assessments to pay for the furnishing of municipal services, and the tax imposed shall be within the limits of millage set for municipal purposes. Should such services be furnished within a municipality, the total millage levied by the municipality and the county district levy for these municipal purposes shall not exceed the maximum millage set by law for municipal purposes.

5.3 Limitation on debt or its equivalent

5.3.1 Bonds

In addition to the limitations on general obligation debt imposed by the State Constitution, the issuance by the County of notes, bonds or other instruments of indebtedness evidencing borrowing to be paid back in part or in full by non-ad valorem tax revenues received by the County, in an amount which, individually or in combination with other issues for the same project authorized within the preceding two (2) years, exceeds \$15,000,000 (including administrative costs of the issue), shall be authorized only after approval by a majority vote of the electors at a special election called for that purpose or in conjunction with any regular election . . .

5.4 Preservation of existing millage limitations

As provided in Chapter 74-430, Laws of Florida, Brevard County shall not increase its ad valorem tax revenues for operating funds (exclusive of revenues from new construction and improvements) in any one year by more than ten percent over the ad valorem revenues in the previous year, without approval of a majority of the electors of the County voting thereon at a general election or special election called for purposes of such approval. This restriction does not apply to those minimum levies necessary for participation in state revenue sharing.

C. EFFECT OF PROPOSED CHANGES:

This bill clarifies that where a county charter contains a referendum provision prior to the levy of ad valorem taxes, the charter provision controls.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Provides that a county is not required to hold a referendum prior to the levy of ad valorem taxes, unless so specified in the county charter.

Section 2 -- Provides for an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no fiscal impact on revenues.

2. Expenditures:

It is unknown whether charter counties other than Brevard county are citing 125.01 (1) (r) as controlling authority, or if they are holding referendums where the charter so provides. If so, there may be a slight increase in expenditures, due to the cost of referendums.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Representatives from the Citizens for Constitutional Property Rights, Inc. express support for this bill.

The Property Appraiser for Brevard County wrote to the Sponsor of the bill on March 31, 2000 the following:

House Bill 1907 was just brought to my attention and I wish to express my support for this amendment to Section 125.01 (1) (r).

I originally proposed that any new Municipal Service Taxing Unit must be approved by a referendum relating to the persons affected and this was taken up as a charter amendment by a local Political Action Committee. The Committee was successful in obtaining the required signatures to have this placed on the ballot but the County attorney stated that Section 125.01 (1) (r) caused the amendment to be unconstitutional because it conflicted with that statute. The wording which states "There shall be no referendum required" has been misinterpreted to mean that no referendum shall be held. If the statute intended to prohibit a referendum, it should have clearly stated such. Your amendment will eliminate this perceived conflict with my proposal and, hopefully, allow the amendment to proceed to the ballot in its original, binding form.

Thank you for pursuing this.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Cindy M. Brown, J.D.

Joan Highsmith-Smith