



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Lower Taxes** - While the bill does not directly lower taxes, it does provide a mechanism by which some local governments and citizens may limit future local government tax increases.

#### B. EFFECT OF PROPOSED CHANGES:

The State Constitution provides that counties operating under county charters shall have all powers of local self-government not inconsistent with general law.<sup>1</sup> Several local attempts to place various budget caps into charter county charters have been found to be inconsistent with the constitution and general law which vests exclusively in the county commission to establish the county budget (ch. 129, F.S.) and millage rates (ch. 200, F.S.).<sup>2</sup>

Section 125.01(1)(q), F.S., authorizes counties to create municipal service taxing (MSTU) or benefit (MSBU) units for all or any part of the unincorporated area of the county. MSTUs and MSBUs allow a county to provide service in a particular geographic area and pay for that service using a levy of ad valorem taxes in only that area. The county commission is the governing body of the MSTU or MSBU.

Chapter 129, F.S., establishes a budget system for each county and mandates that the county commission prepare, approve, adopt and execute for each fiscal year an annual budget for such funds as may be required by law or by sound financial practices and generally accepted accounting principles. This budget controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.<sup>3</sup> Chapter 200, F.S., provides for the determination and levy of tax millage. Similarly, it is the county commission which is given the authority to set the millage rate.<sup>4</sup>

This bill provides the general law basis to support budget caps in county charters and MSTU enacting ordinances.

#### Effect of HB 47

This bill amends s. 200.071, F.S., to limit the maximum millage that the state's 19 charter counties and municipal service taxing units may levy to the lesser of 10 mills or the amount specified respectively in a county's charter or a municipal service taxing unit's establishing ordinance.

Specifically, the bill authorizes charter counties to limit their maximum millage and provides:

- That counties may cap, through their charters, the annual growth in ad valorem tax revenues;
- That such caps may not restrict revenue growth below the lesser of 3% or the Consumer Price Index;
- That such caps must allow for emergency or critical needs; and
- For a growth rate computation.

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<sup>1</sup> Article VIII, s. 1(g), State Constitution.

<sup>2</sup> *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556 (Fla. 1980); and *Charlotte County Board of County Commissioners v. Taylor*, 650 So.2d 146 (Fla. 2d DCA 1995).

<sup>3</sup> Section 129.01(1), F.S. See also: *Board of County Commissioners of Marion County v. McKeever*, 436 So.2d 299, 301-302 (Fla. 5<sup>th</sup> DCA 1983).

<sup>4</sup> Section 200.011, F.S.

Florida's 19 charter counties are: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia Counties.

### **Background:**

HB 47 is identical to the HB 1361, first engrossed, from the 2004 session. Though that bill passed in the House, it died in the Senate.

### **Local Budget Cap Attempts**

Numerous past efforts to establish some type of budget cap in county charters have been struck down by the courts.

*Dade County (chartered):* In *Board of County Commissioners of Dade County v. Wilson*,<sup>5</sup> the Florida Supreme Court found that ch. 200, F.S., set forth the exclusive manner by which to set countywide millage rates. The Court held that a proposed voter initiative to set a county millage rate at four mills for Dade County for 1980-1981 was unconstitutional.

*Marion County (non-chartered):* In *Board of County Commissioners of Marion County v. McKeever*,<sup>6</sup> the Fifth District Court of Appeal found that chs. 129 and 200, F.S., contemplated the annual preparation and adoption of the budget and the setting of millage rates by a county commission. This Court struck down a Marion County ordinance that purported to establish a cap of .25 mills of ad valorem tax for the county transportation fund for a period of ten years.

*Charlotte County (chartered):* In *Charlotte County Board of County Commissioners v. Taylor*,<sup>7</sup> the Second District Court of Appeal found unconstitutional a voter approved amendment to the County's charter to limit the Commission's authority to adopt any millage rate which would result in more than a 3% increase in the total revenue generated over the total ad valorem taxes for the previous year. In so finding, the Court noted the charter amendment was inconsistent with the provisions of chs. 129 and 200, F.S. The Court struck down the charter amendment noting that Art. VIII, s. 1(g), State Constitution, provides that the counties operating under county charters shall have all the powers of local self-government not inconsistent with general law.

*Hillsborough County (chartered):* Attorney General Opinion 2001-04 advised the Hillsborough County Board of County Commissioners that a county could not amend its charter to place a cap on the annual increase in the county's operating budget with the provision that the cap may be waived by an affirmative vote of at least six of the seven members of the board of county commissioners.

*Brevard County (chartered):* Recently, in *Ellis v. Burk*,<sup>8</sup> the Fifth District Court of Appeal struck down a tax cap provision of the Brevard County Home Rule Charter. The provision prohibited the County from increasing its ad valorem tax revenue in any one year by more than the lesser of 3% or the percentage change of the CPI for the previous year, over the previous year's ad valorem revenues without the approval of a majority of the voters at a general or special election. In the decision, the Court stated that "[u]nder our state constitution and statutory scheme, the power to limit a county commission's ability to raise revenue for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the [L]egislature."

### **Ad Valorem Tax**

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<sup>5</sup> 386 So.2d 556 (Fla. 1980).

<sup>6</sup> 436 So.2d 299 (Fla. 5<sup>th</sup> DCA 1983).

<sup>7</sup> 650 So.2d 146 (Fla. 2d DCA 1995).

<sup>8</sup> 29 Fla. L. Weekly D195 (Jan. 9, 2004)

Ad valorem taxation is a tax on the fair market value of locally assessed real estate, tangible personal property, and state assessed railroad property, less certain exclusions, differentials, exemptions, and credits. Intangible personal property is excluded since it is separately assessed and taxed by the state.

The ability of local governments to raise revenue for their operations is narrowly constrained by the state constitution.

No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.<sup>9</sup>

With the exception of the ad valorem tax and several constitutionally authorized state-shared revenue programs, local governments are dependent on the Legislature for the authority to levy any other forms of taxation, thereby increasing the relative importance of the ad valorem tax.

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by the constitution.<sup>10</sup>

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; 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 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.<sup>11</sup>

To summarize, local governments may levy ad valorem taxes subject to the following limitations.

1. Ten mills for county purposes.
2. Ten mills for municipal purposes.
3. Ten mills for school purposes.
4. A millage authorized by law and approved by voters for special districts.
5. A millage authorized by the voters to pay off bonds for a period not to exceed two years.

As stated above, the state constitution provides two exceptions to the ten-mill cap.<sup>12</sup> The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years. Additionally, no property may be subject to more than twenty mills of ad valorem tax for municipal and county purposes without elector approval, regardless of the property's location, under the state constitution. Duval County-City of Jacksonville is a consolidated government; therefore, it has a twenty-mill cap since it operates as both a county and municipal government.

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<sup>9</sup> Article VII, s. 1(a), State Constitution.

<sup>10</sup> Article VII, s. 9(a), State Constitution.

<sup>11</sup> Article VII, s. 9(b), State Constitution.

<sup>12</sup> *Id.*

C. SECTION DIRECTORY:

Section 1. Amends ss. 200.071(1) and (3), F.S., relating to certain limitations on ad valorem tax levies.

Section 2. Provides an effective date of January 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill provides discretion to charter counties to limit, through the county charter, the maximum ad valorem millage that may be levied.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have the potential to lower taxes for some taxpayers coupled with the potential for a reduction in service delivery.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 18, 2005, the Committee on Finance and Tax adopted one amendment to HB 47. That amendment removed a provision governing the budgets of constitutional and charter county officers. The bill was then passed as a Committee Substitute.