

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower taxes – By changing the definition of municipality of special financial concern, the bill makes it more difficult for a municipality to increase taxes.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

During Special Session 2007B, the legislature passed Chapter 2007-321, Laws of Florida, which limited the authority of counties, municipalities and special districts to levy property taxes.

Section 200.185, F.S., created by Chapter 2007-321, provides maximum millage rates that counties and municipalities can levy. For 2007 levies, maximum millage rates for each county and municipality are dependent on the increase in each county's and municipality's per capita property tax revenues from Fiscal Year 2001-02 to 2006-07. For example, counties and municipalities that had the largest increases in per capita property tax revenues are assigned the lowest maximum millage rates. The maximum millage rates that a county or municipality can levy in 2007 is a percentage ranging from 91% to 100% of the "rolled-back rate".¹ A county or municipality can levy a higher maximum millage rate if the higher rate is adopted by a super majority vote of the governing body.²

Section 200.185, F.S., also created special categories of counties and municipalities of special financial concern that receive special treatment. A "county of special financial concern" is defined as a county considered fiscally constrained pursuant to s. 218.67, F.S.,³ and for which 1 mill will raise less than \$100 per capita.⁴ A "municipality of special financial concern" is defined as a municipality within a county of special financial concern or a municipality that has been at any time since 2001 in a state of financial emergency pursuant to s. 218.503.⁵ The maximum millage that a county or municipality of special financial concern can levy in 2007 is 100% of the rolled back rate, unless a higher rate is adopted by a super majority vote.

Twelve municipalities have been in a state of financial emergency at some time since 2001 and are considered municipalities of special concern for purposes of Section 200.085, F.S. These municipalities and their populations as of April 12, 2006 are: —Hawthorne (1,401), Indian Creek (59), Miami (391,355), Opa-Locka (15,487), Minneola (9,440), Crestview (19,494), Laurel Hill (581), Valparaiso (6,537), Eatonville (2,547), Pahokee (6,419), South Bay (4,666), and Mulberry (3,459).

A county or municipality that violates the provisions of Section 200.185, F.S., by adopting a millage rate in excess of the applicable maximum millage rate will forfeit the distribution of local government half-cent sales tax revenues during the 12 months following a determination of noncompliance by the Department of Revenue. If the executive director of the Department of Revenue determines that any county or municipality is not in compliance, he or she must notify the taxing authority, which must then repeat the hearing and notice process for adopting a millage rate. The taxing authority may remedy the

¹ The "rolled-back rate" is a millage rate that will produce in the current year the same amount of taxes that were levied in the previous year, plus the taxes levied on new construction and other adjustments. See section 200.065(1)

² With a two-thirds vote of the governing board, a millage rate equal to the rolled back rate may be adopted; with a unanimous vote, a rate equal to the prior year's nonvoted millage rate may be adopted; if approved by the voters, any higher rate may be adopted. See Section 200.185(2)(b) and (c), and (3)(b) and (c), F.S.

³ Section 218.67(1) provides: "Each county that is entirely within a rural area of critical economic concern as designated by the Governor pursuant to s.288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1, shall be considered a fiscally constrained county.

⁴ Section 200.185(1)(a), F.S.

⁵ Section 200.185(1)(b), F.S.

noncompliance by adopting a millage that does not exceed the maximum millage allowed. During the pendency of any procedure pursuant to a determination by the executive director of noncompliance or any administrative or judicial challenge to any action taken under s. 200.165(13), F.S., the tax collector must escrow revenues collected by the noncomplying taxing authority in excess of the maximum amount allowed until the rehearing and renote process is completed and approved by the Department of Revenue. If the taxing authority remedies the noncompliance, any excess revenue collected must be held in reserve until the next fiscal year and then be used to reduce property taxes.

For Fiscal Year 2008 – 2009, Section 200.185, F.S., provides that the maximum millage rate shall be calculated without taking into account the tax revenues received in 2007 – 2008 from a millage rate approved by a super majority vote that are in excess of the maximum millage rate that could have been levied by a majority vote.

Proposed Changes

The bill amends the definition of “municipality of special financial concern” so that a municipality must have been in a state of financial emergency pursuant to s. 218.503, F.S., since June 30, 2002 (instead of since 2001) in order to fall within the definition.

The bill also provides that a municipality that is no longer considered a municipality of special financial concern because of this change, and that has adopted a millage rate in excess of the applicable maximum millage that can be adopted without a supermajority vote, is deemed to be in violation of section 200.185, F.S., and must follow the procedures provided in s. 200.165(13)(d) and (e), F.S., to remedy the violation. The municipality may remedy the violation by lowering its millage rate or by adopting a maximum millage rate by the necessary supermajority vote. A municipality that fails to comply with these provisions will forfeit the distribution of local government half-cent sales tax revenues during the 12 months following the determination of noncompliance.

A municipality affected by the changes in this bill that adopts its millage rate after the date this bill becomes law is to be treated as every other municipality that is not a municipality of special financial concern.

The City of Miami is the only municipality that will be affected by this change in the definition of a municipality of special financial concern. The effect of the change made by this bill is to lower the City of Miami’s maximum millage rate from 100% of the rolled-back rate to 91% of the rolled-back rate, unless approved by the applicable super majority vote of the governing body.

On September 27, 2007, the City of Miami governing board adopted a millage rate by a unanimous vote based upon the rolled-back millage rate but it has requested an extension until October 15 from the Department of Revenue for adopting its final budget.

The effect of HB 1C depends upon how the City of Miami responds to it:

Scenario 1 -- Miami does nothing more than it has done to date. In other words the rate it has adopted is the final millage rate. Under this scenario, Section 2 of the bill applies and Miami will be deemed to have violated the law and will have the opportunity to correct the violation. The city commission will have to take another vote and either (1) adopt a lower millage rate (91% of rollback) by majority vote or (2) obtain the needed votes to override. If Miami chooses (1), the higher millage will be paid by taxpayers, but the taxes collected in excess of the adopted lower millage rate will be placed in escrow. If Miami chooses (2) the higher rate prevails. If Miami cannot accomplish (1) or (2), it will lose revenue sharing.

Scenario 2 -- Miami, in reaction to legislative action, readopts the same rate or another rate as their final millage rate prior to October 15th. Under this scenario, Section 2 of the

bill does not apply and Miami is treated just like any other municipality that is not a municipality of special financial concern. The millage it adopts will go on the tax bills and its millage adoption process will be evaluated the same as for all other cities that are not municipalities of special financial concern. If the department determines the city has not complied with the law, Miami will get an opportunity to correct the situation, prior to losing revenue sharing.

HB 1C also affects the City of Miami's 2008-09 fiscal year base maximum millage rate, since that rate is the rolled-back rate based on the revenue that would have been raised at the majority vote rate in fiscal year 2007-08, not the higher rate levied by an extraordinary vote.

C. SECTION DIRECTORY:

Section 1. Amends Section 200.185 (1)(b) to change definition of "municipality of special financial concern."

Section 2. Provides procedures that must be followed to adopt millage rates by a municipality affected by the changes made in Section 1.

Section 3. Provides an effective date of upon becoming law and makes the changes operate retroactively to June 21, 2007.

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:

See Fiscal Comments

2. Expenditures:

A municipality affected by this bill may incur additional expenses to notice and hold additional public hearings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers in a municipality affected by the provisions of this bill that does not override the maximum millage limitations by a supermajority vote of the governing body may experience lower taxes than otherwise.

D. FISCAL COMMENTS:

A municipality affected by the provisions of this bill will have to levy a lower millage rate than otherwise unless it can adopt the millage by a super majority vote of the governing body.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a county or municipality to spend funds. Therefore, the provisions of Subsection 18(a) and (c), Article VII, Florida Constitution, do not apply.

Subsection 18(b), Article VII, Florida Constitution, provides that the legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that municipalities and counties have to raise revenues in the aggregate. This bill limits the millage rates that municipalities and counties can levy by a majority vote of the governing board. However, with a supermajority vote of the governing board, cities and counties can exceed the limitation set forth in the bill.

It is unclear whether the requirement for a supermajority vote to exceed the millage limitations represents a reduction of revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to cities and counties was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to look at the method for adopting a millage rate, then the provisions of this bill requiring a supermajority vote to adopt a millage rate that could currently be adopted by a majority vote may be considered a mandate requiring a two-thirds vote of the legislature. There is no legal authority to guide the legislature in making a determination regarding this issue.

2. Other:

Section 200.185, F.S., created by Chapter 2007-321, Laws of Florida, established several classes of local governments for the purpose of limiting property tax revenue in Fiscal Years 2007-2008 and 2008-2009. This bill changes the definition of one of these classes. The effect of this change is to move one municipality from one class to another.

Because the bill affects only one municipality, it raises the question of whether the law being enacted is a special law or a general law of local application under Article III, Sections 10 and 11, of the Florida Constitution. The answer to this question depends on whether the courts will conduct the analysis by focusing on "the bill," or by focusing on the statutory classification scheme resulting from the bill.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR:

No statement submitted

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES