

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 385

Limitation on Aggregate Ad Valorem Taxes on Real Property

SPONSOR(S): Rivera

TIED BILLS:

IDEN./SIM. BILLS: SJR 738

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|-----------|----------------|----------------|
| 1) | Military & Local Affairs Policy Committee | 9 Y, 3 N | Noriega | Hoagland |
| 2) | Economic Development & Community Affairs Policy Council | 10 Y, 5 N | Noriega | Tinker |
| 3) | Finance & Tax Council | | Diez-Arguelles | Langston |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

This joint resolution proposes an amendment to Article VII, section 9 of the Florida Constitution to limit the amount of ad valorem taxes that may be collected by counties, school districts, municipalities, and special districts from any parcel of real property to 1.35 percent (the equivalent of 13.5 mills) of a parcel's highest taxable value. The 1.35 percent limit would not apply to:

- Ad valorem taxes levied for the payment of bonds maturing more than 12 months after issuance to finance or refinance capital projects authorized by law with the approval of the voters; or
- Ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors.

The proposed amendment also requires the Legislature to enact general laws governing the distribution of all tax revenues derived from parcels for which the combined ad valorem tax levies of multiple taxing authorities exceed 1.35 percent of the parcel's highest taxable value.

The proposed amendment will be submitted to the electors at the general election in November 2010 or at an earlier special election if specifically authorized by law enacted by the Legislature for that purpose. If approved by 60 percent of the voters at the 2010 general election, the proposed amendment will take effect in January 2011.

The Revenue Estimating Conference has not met to evaluate this joint resolution. In 2008, the Financial Impact Estimating Conference (FIEC) prepared an analysis and financial impact statement of an initiative petition that is identical to this proposal. The FIEC estimated that the initiative would reduce annual property tax revenues by at least \$6 billion, assuming constant millage rates. See "Fiscal Comments" section of this analysis.

The Department of State estimates that the cost of the proposed constitutional amendment is \$59,254. This cost is the result of placing the joint resolution on the ballot and publishing the notices as required by the Florida Constitution.

This joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Overview of Ad Valorem Taxation

The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts. The amount of tax levied is based on the taxable value of real and tangible personal property as of January 1 of each year and the tax rate (millage rate) applied to such value.¹ The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.²

With the exception of the ad valorem tax and other home-rule revenue sources, local governments are dependent on the Legislature for authority to levy any other forms of taxation. The property tax is the largest single tax revenue source for local governments in Florida, with approximately \$31.0 billion levied in fiscal year 2007–08. Ad valorem property tax revenues are also the primary tax revenue source for school districts. Of the \$31.0 billion levied statewide for FY 2007-08, school districts levied an estimated \$13.25 billion in property taxes.³

The “taxable value” of real and tangible personal property is the fair market value, or “just value,” of the real and tangible personal property adjusted for any exclusions, differentials, or exemptions allowed by the constitution or the statutes.⁴ The Florida Constitution strictly limits the Legislature’s authority to provide exemptions or adjustments to fair market value.⁵

¹ Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value (but does not include the vehicular items . . .) capable of manual possession and whose chief value is intrinsic to the article itself.

² Article VII, s. 1(a), Florida Constitution.

³ *Florida Tax Handbook*, 2008.

⁴ Sections 192.001(2) and (16), F.S., define the terms “assessed value” and “taxable value.” “Assessed value” is generally synonymous with “just value” unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. “Taxable value” is the assessed value minus any applicable exemptions such as the \$25,000 homestead exemption. “Just value” is the estimated market value of the property.

⁵ Article VII, s. 4, Florida Constitution.

Millage Rates

Property tax rates, or millage rates, are set by each taxing authority and vary throughout the state. Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards, by the taxable value of property within that jurisdiction. The Florida Constitution limits the millage rates that may be levied.

Counties, Municipalities and Schools

Counties, municipalities, and school districts are each limited to levy up to 10 mills (or 1 percent).⁶ By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the ten mill limitation to repay bonds to finance capital projects and for other purposes for a period of not longer than two years.⁷ Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas receiving municipal-type services.

Special Districts

Independent special district millage rates are limited by the law establishing such districts and must be approved by the voters within the district. Dependent special district millage rates are included in the limitation applicable to the authority to which they are dependent. Up to 1 mill may be levied for water management purposes, except in northwest Florida where the limit is 0.05 mill.⁸

Schools

The Florida Constitution requires that the Legislature provide by law for a uniform, efficient, safe, secure and high quality system of free public schools. The Legislature accomplishes this by providing for the funding of public schools through a combination of ad valorem taxes and other state revenues. In addition to the constitutional millage limitation, school districts are subject to certain statutory requirements in order to participate in the state's K-12 funding program, called the Florida Education Finance Program (FEFP).⁹

Limits on Growth of Property Tax Levies

In 2007, the Legislature enacted statutory changes that required most county, municipal, and special district governments to reduce their FY 2007-08 millage rates below their "rolled back rates."¹⁰ Exceptions were made for certain fiscally limited governments and for certain types of activities. Local governments were allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. For FY 2008-09 and beyond, the same legislation limited the growth in each county's, city's, or independent special district's property tax levies to growth in state per capita personal income growth plus growth attributable to the value of net new construction added to the tax roll each year. Again, overrides of the limitation are allowed by certain extraordinary votes or referenda.

Other Considerations

The Florida Constitution requires that "all ad valorem taxation shall be at a uniform rate within each taxing unit . . ." ¹¹ Generally, this requirement means that a taxing authority may not levy different rates on property located in different geographic areas within the taxing authority nor levy different rates on different types of property.

Combined millage rates, that is, the total of all the millage rates that apply to the taxable value of each parcel of property, vary greatly throughout the state. For example, in FY 2007-08, combined millage rates applicable to

⁶ Article VII, s. 9, Florida Constitution. A rate of one mill may be expressed as follows: 1 mill = 0.1 cent or \$0.001; \$1 per \$1,000; or 0.1%.

⁷ Article VII, s. 9, Florida Constitution.

⁸ Id.

⁹ Section 1011.71, F.S.

¹⁰ The "rolled back rate" is the tax rate that will produce the same amount of tax revenue for the current year that was produced the previous year, after making allowances for some tax base changes. See s. 200.065(1), F.S.

¹¹ Article VII, s. 2, Florida Constitution

some properties in Glades County exceeded 26 mills (2.6 percent) while combined millage rates in some areas of Monroe County were approximately 6 mills (0.6 percent). A similar disparity may occur within a county. For example, in Miami-Dade County, combined millage rates ranged from 16 mills (1.6 percent) to 25 mills (2.5 percent). On a statewide basis, the average total millage levied for FY 2007-08 was 17 mills (1.7 percent), which included special district, operating, and debt service levies.¹²

Proposed Initiative Amendment: 1.35% Property Tax Cap, Unless Voter Approved

On November 19, 2007, the Secretary of State approved the form of a proposed initiative amendment sponsored by *Cut Property Taxes Now*, a political action committee. The proposed initiative amendment, entitled "1.35% property tax cap, unless voter approved," is virtually identical to the amendment proposed by this House Joint Resolution.

Advisory Opinion to the Attorney General Re: 1.35% Property Tax Cap, Unless Voter Approved

On January 30, 2009, the Florida Supreme Court concluded that the proposed amendment was exempt from the single-subject requirement of Article XI, section 3 of the Florida Constitution. However, the Florida Supreme Court concluded that the ballot summary for the initiative was misleading and did not comply with s. 101.161(1), F.S., regarding statutory requirements for referenda, and removed the initiative from the ballot.

The Florida Supreme Court provided the following reasons for its conclusion regarding the ballot summary:

- The summary states that the property tax limits do not apply to property taxes approved by voters but fails to point out that any property taxes approved by voters cannot extend for longer than two years. The summary also does not refer at all to Article VII, section 12, nor does it tell the voter that voter approval is not required for all taxes levied for the payment of bonds under Article VII, section 12(b);¹³
- The summary is misleading because it provides for legislative distribution of taxes when the revenues from parcels have reached the 1.35 percent cap. Having reached 1.35 percent is synonymous with being at the point of that percentage, whereas, exceeds means is more than the percentage. Thus, that portion of the summary that implies that the Legislature is being authorized to distribute tax revenues above 1.35 percent is inconsistent with the language of the amendment; and
- The summary is also misleading because it does not inform the voter of the repeal of an existing Florida Constitutional provision, specifically Article VII, section 9(b). Article VII, section 9(b) provides for the millages that can be assessed by the various local government units, school districts, water management districts, and other special districts. There is nothing in the summary, or indeed the amendment itself, which would put a voter on notice that this constitutional provision is being repealed.¹⁴

¹² *Florida Tax Handbook*, 2008.

¹³ Article VII, s. 12, Florida Constitution, provides:

Section 12. Local bonds.---Counties, school districts, municipalities, special districts and local government 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.

(Emphasis added.)

¹⁴ Advisory Opinion to the Attorney General Re: 1.35% Property Tax Cap, Unless Voter Approved (Case Nos. SC 08-1153 & SC08-1239), January 30, 2009.

Proposed Changes

This joint resolution proposes an amendment to Article VII, section 9 of the Florida Constitution to limit the combined amount of ad valorem taxes that can be collected by counties, school districts, municipalities, and special districts from any parcel of real property to 1.35 percent (the equivalent of 13.5 mills) of a parcel's "highest taxable value."¹⁵ However, the 1.35 percent limit does not apply to:

- Ad valorem taxes levied for the payment of bonds maturing more than 12 months after issuance to finance or refinance capital projects authorized by law with the approval of the voters; or
- Ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors.

This joint resolution also requires the Legislature to enact general laws governing the distribution of tax revenues derived from parcels for which the combined ad valorem tax levies exceed 1.35 percent of the parcel's highest taxable value. While the proposed amendment limits the amount of ad valorem taxes that may be collected from a property owner, the taxes levied by multiple taxing authorities on a single parcel may exceed 1.35 percent of the parcel's highest taxable value. If that situation occurs, the allowable tax revenues collected (in other words, the dollars available under the 1.35 percent limitation) from the parcel owner will be distributed to the taxing authorities levying taxes on the property as provided by general law.

B. SECTION DIRECTORY:

Not applicable to a joint resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This joint resolution will not have a direct effect on state government revenues.

2. Expenditures:

The state constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.¹⁶

Based on the 2008 election costs to advertise a proposed constitutional amendment, the Department of State, Division of Elections, estimates that the total non-recurring cost to advertise this proposed constitutional amendment is \$59,254. This cost is determined by multiplying the total number of words in the proposed amendment (approximately 644) by the per word cost of \$92.01.¹⁷ The Department of State notes that there is no appropriation associated with this constitutional amendment at this time.

¹⁵ Some assessment preferences and exemptions do not apply to taxes levied by all taxing authorities. Therefore, a specific parcel may have a different taxable value for school district taxes than for county taxes. Generally, the taxable value used for school district taxes is the highest taxable value.

¹⁶ Article XI, sec. 5(d), Florida Constitution.

¹⁷ Based on information and methodology received from staff of the Department of State.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated this joint resolution. In 2008, the Financial Impact Estimating Conference (FIEC) prepared an analysis and financial impact statement of an initiative petition that is identical to this proposal. The FIEC estimated that the initiative would reduce annual property tax revenues by at least \$6 billion, assuming constant millage rates. See "Fiscal Comments" section of this analysis.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of real property located in areas of the state where combined millage rates exceed 13.5 mills will pay less property tax in the future.

D. FISCAL COMMENTS:

Section 100.371(6)(a), Florida Statutes, requires the Financial Impact Estimating Conference (FIEC) to "complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenue or costs to the state or local governments resulting from the proposed initiative." Following several meetings in May and June 2008, the FIEC completed an analysis of the initiative petition "1.35% Property Tax Cap, Unless Voter Approved," which is identical to this joint resolution. The following comments are based on the FIEC analysis.

The FIEC estimated that the amendment would reduce annual total school, county, municipal and special district property tax revenues by at least \$6 billion, or 17 percent, based on 2007 (non-school) and 2008 (school) tax rates. The FIEC also noted that legislative implementation would likely produce greater reductions and would determine how each type and unit of local government is affected, but those impacts could not be determined without legislative action. Local government expenditures will be reduced unless replacement revenues are enacted.¹⁸

The impact of this proposal on individual property owners, cities, counties, school districts and special districts will depend on the millage rates levied by all the taxing authorities that can levy a tax on a particular parcel and on the method chosen by the Legislature to distribute taxes collected from properties where the limit applies. For example, for properties located in an area where the combined millage rates levied by all taxing authorities do not exceed the 1.35 percent limit, there will be no benefit to the property owner and no impact on the taxing authorities.

For properties located where the combined millage rates exceed the limit, the property owners will experience a reduction in property taxes, since their payments will be limited. Taxing authorities in these areas may experience a reduction in property tax revenues, depending on how the Legislature determines that taxes collected from these properties will be distributed to the taxing authorities. If the Legislature provides for a pro-rata distribution of the taxes collected, each taxing authority will receive a proportionally reduced amount from what was levied. For example, if the combined millage rate levied by taxing authorities is 16.88 mills, each taxing authority will collect 80 percent (13.50/16.88) of the taxes levied on the affected properties. Alternatively, if the Legislature provides for a priority system to distribute the taxes collected, some taxing authorities may collect the entire amount levied while others may not collect anything.

¹⁸ The FIEC's complete Financial Impact Statement can be found at:

<http://edr.state.fl.us/conferences/constitutionalimpact/2010%20Ballot/1.35%25%20Tax%20Cap/FIEC%201.35%25%20Tax%20Cap%20Financial%20Information%20Statement.pdf>.

Public school funding is statutorily tied to property taxes through the required local effort (RLE) – the amount of property taxes that a school district must levy in order to participate in the Florida Education Finance Program (FEFP). To the extent that the amendment’s implementation reduces the amount of property tax revenue used to fund school districts, the state will have to provide replacement revenue or reduce the total amount of revenues received by school districts.

The full effect of the proposed amendment will not be known until the Legislature implements it. In implementing the amendment, the Legislature will have to consider a number of issues, including the interaction between this amendment and other constitutional provisions, and a number of policy questions regarding the use of property tax as a source of local government revenue. However, due to the nature of the amendment and the changes that will be needed for implementation, the FIEC believed that the impact of the amendment, once implemented, will be higher than the minimum impact by an amount that cannot be determined at this time.

Moreover, an unknown number of state laws, rules and policies may be affected by the specific option chosen by the Legislature. Most of this impact – while not quantifiable – would fall on the Legislature and the Department of Revenue, the state agency responsible for property tax oversight. The development, production, and legal costs to the state are expected to be insignificant relative to the overall recurring impact on local property tax revenues.

It is also likely that the state’s Truth in Millage (TRIM) process will have to be modified, primarily affecting local governments. The TRIM process currently consists of two public hearings to adopt the tentative and final budgets and the required millage rates to fund them; the TRIM notice (Notice of Proposed Property Taxes) mailed out to taxpayers; and, newspaper advertisements. The timetable and form of each of these components is tightly prescribed by law. Because the final action is in the form of two votes, first to adopt the millage rate and then to adopt the budget, the amendment’s emphasis on “levies” will make the existing process unworkable for many of the alternatives. The costs associated with a significant change in TRIM procedures cannot be quantified – either positively or negatively.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to House Joint Resolutions.

2. Other:

Article XI, section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose.

Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a constitutional amendment to pass.

B. RULE-MAKING AUTHORITY:

This joint resolution does not require any agency to adopt administrative rules; however, it may be necessary for the Legislature to authorize rulemaking by the Department of Revenue in future implementing legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The ballot summary for this joint resolution is different than the initiative petition's ballot summary found to be misleading by the Florida Supreme Court. While the ballot summary appears to address most of the issues identified by the Supreme Court, one issue cannot be resolved by the ballot summary. The court determined that one of the reasons the ballot summary of the initiative was misleading was because it did not mention that the initiative repealed Article VII, section 9(b), Florida Constitution (the millage limitations). The court did not explain how it reached this conclusion and the court's reasoning cannot be gleaned from the opinion. The proposed amendment does not explicitly repeal Article VII, section 9(b).

As mentioned earlier, in implementing this amendment, the Legislature will have to consider a number of issues, including the interaction between this amendment and other constitutional provisions, and a number of policy issues regarding the use of property tax as a source of local government revenue. For example, the proposed amendment does not explicitly change the current constitutional millage limitations and uniform rate requirement. However, the proposed amendment contains the introductory phrase "Notwithstanding any other provision of this constitution . . ." In implementing the amendment, the Legislature, and possibly the courts, will have to decide whether the current constitutional provisions have continuing validity and need to be harmonized with the proposed amendment or whether they have been overridden by the proposed amendment.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.