

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SJR 738

INTRODUCER: Senator Bennett

SUBJECT: Limitation on Amount of Combined Ad Valorem Taxes

DATE: March 6, 2009 REVISED: 03/10/09 3/17/09 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/1 amendment
2.			FT	
3.			EA	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This joint resolution proposes an amendment to Art. VII, section 9 of the State Constitution to limit the aggregate total property taxes collected by counties, municipalities, special districts, and school districts to 1.35 percent (13.5 mills) of a parcel's highest taxable value. The joint resolution provides that "taxable value" is the value of real property to which millage rates are applied.

This joint resolution does not directly limit the taxing authority of local governments to a collective rate of 13.5 mills. It does provide that they may not retain revenue collected for more than 13.5 mills worth of the highest taxable value of real property and that the Legislature will provide, by general law, for the distribution of excess taxes collected.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature.

II. Present Situation:

Just Value and Taxable Value

Just Value—Art. VII, section 4 of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.¹

The Florida Constitution authorizes certain alternatives to the just value standard for specific types of property. Agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.² Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.³ In addition, the “Save Our Homes” assessment limitation to the Florida Constitution provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.⁴ Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.⁵ Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.⁶

Taxable value—The taxable value of real and tangible personal property is the just value (fair market value) of the property, adjusted for exclusions (agricultural lands, etc.), differentials (Save Our Homes), or exemptions (homestead) allowed by the constitution or by state law as authorized in the constitution.

Millage

Art. VII, section 9 of the State Constitution, provides that counties, school districts, and municipalities **must** be authorized, and special districts **may** be authorized, by law, to levy ad valorem taxes on the assessed value of real estate and tangible personal property. With the exception of taxes levied to pay for bonds and taxes levied for periods of not longer than two years by vote of the electors who are owners of property not wholly exempt from being taxed, ad valorem taxes may not be levied in excess of the following rates:

- For all county purposes, 10 mills.
- For all municipal purposes, 10 mills.
- For all school purposes, 10 mills.

¹ *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dad County*, 275 So.2d 4 (Fla. 1973)

² Art. VII, section 4(a) of the State Constitution.

³ Art. VII, section 4(c) of the State Constitution.

⁴ Art. VII, section 4(d) of the State Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

⁵ Art. VII, section 4(e) of the State Constitution.

⁶ Art. VII, section 4(f) of the State Constitution.

- For all special districts, a millage rate authorized by law approved by vote of the electors who are property owners who are not wholly exempt from taxation.

Setting millage is the process by which governments can compute property taxes. A millage rate is the property tax rate in terms of tenths of cents in tax per dollar of property value. A tax rate of 10 mills is equal to \$1 per \$1000 of property value. Section 200.001, F.S., provides for the establishment of county, municipal, school, and independent special district millage.

Property taxes are the largest source of revenue for local governments. In 2007, the just value of all real property in Florida was \$2.5 trillion and the taxable value was \$1.7 trillion. The just value of homestead property was \$1.2 trillion and the taxable value was \$618.6 billion.⁷ The statewide average millage rate in 2007 was 17.02 mills. In 2008, the statewide average millage rate was 16.57 mills.⁸

Recent Legislation and Revisions to the Florida Constitution

In 2007, the Legislature enacted chapter 2007-321, Laws of Florida, to provide for statutory millage caps that required most county, city and special district local governments to reduce the 2007-2008 millages rates beyond the rolled back rates.⁹ Those governments could override the prescribed rate reductions by extraordinary votes of the local governing body or by referendum of the electorate.¹⁰ Exceptions to the cap requirements were provided for local governments of special financial concern.¹¹ For 2008-09 and beyond, local governments must impose maximum millage rates based on growth in the statewide per capita personal income, and growth attributable to the value of net new construction added to the tax roll each year.

In January 2008, the electorate approved a constitutional amendment¹² that provided the following:

- An additional homestead exemption of \$25,000 applied to the valuation of homestead property between \$50,000 and \$75,000. The additional exemption does not apply taxes levied by school districts and took effect January 1, 2008.
- A 10 percent assessment limitation increase for non-homestead property. Beginning in 2009, assessment increases may not exceed the prior year assessment by more than 10 percent. School district levies are excluded.

⁷ <http://dor.myflorida.com/dor/property/07FLpropdata.pdf> (last visited March 6, 2009)

⁸ "Report on The Effect of Recent Changes in law on the Notice of Proposed Property Taxes," prepared by the Department of Revenue, January 2009, pg. 21.

⁹ Section 200.065(1), F.S., defines "rolled-back rate" as the rate that will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year less the amount, if any, paid or applied as a consequence of an obligation measured by the dedicated increment value.

¹⁰ In the "Report on the Effect of Recent Changes in Law on the Notice of Proposed Property Taxes", January 2009, the Department of Revenue reported that 207 local governments adopted by the necessary 2/3 vote a millage rate that was up to 10 percent over the required rolled back rate, and 50 local governments unanimously voted to levy at their constitutional or statutory maximum millage rate. (pg. 19)

¹¹ Also, chapter 2007-339, Laws of Florida, requires the Legislature to appropriate money to offset the reductions in ad valorem revenue experienced by fiscally constrained counties, as defined in s. 218.67(1), F.S., because of the constitutional amendment approved by the voters January 29, 2008.

¹² Revisions to Art. VII, sections 3, 4, and 6 of the State Constitution, adopted by 64 percent of voters who voted on January 29, 2008.

- Portability of the Save Our Homes accrued benefit. Effective January 1, 2008, persons with a Save Our Homes benefit who purchase a new homestead may port up to \$500,000 of the benefit to the new homestead, thereby reducing just value in year 1 of ownership of the new homestead to an assessed value at which other exemptions will be applied. School districts are not exempt from this provision.
- Effective January 1, 2008, a \$25,000 tangible personal property exemption that is applicable to all tax levies.

In November 2008, the electorate approved changes in the constitution providing for the classification and assessment of lands used for conservation purposes which must be classified by general law and assessed solely on the basis of use, and lands which meet the requirements for classification and assessment as working waterfront property.¹³

Supreme Court of Florida – Advisory Opinion to the Attorney General re: 1.35% Property Tax Cap, unless voter approved (SC 08-1153 & SC 08-1239)

Cut Property Taxes Now, Inc., a Florida not-for-profit corporation, sponsored an initiative petition to amend the Florida Constitution to establish a 1.35 percent property tax cap, unless a greater percentage is approved by the voters. The petition was filed with the Secretary of State, and the Secretary of State advised the Attorney General that the criteria for registration, submission, and signatures established in s. 15.21, F.S. (2007), had been met.¹⁴ The Attorney General petitioned the Supreme Court of Florida for a written opinion as to the compliance of the initiative petition with the single-subject requirements of Art. XI, section 3 of the State Constitution, and with the requirements of s. 101.161(1), F.S., (2007) as to the ballot summary and title.¹⁵

The Florida Supreme Court concluded that the amendment could not be placed on the ballot because the ballot summary was misleading and did not comply with the requirements of s. 101.161, F.S. (2007). The Court noted that the ballot summary:

- Stated that the property tax limits did not apply to property taxes approved by voters but failed to point out that any property taxes approved by voters cannot extend for longer than two years.
- Was misleading because it provided for legislative distribution of taxes when the revenue from parcels have reached the 1.35 percent cap but the amendment provided for legislative distribution when the revenue from parcels exceeds the 1.35 percent cap.

¹³ Art. VII, section 4(b) and (j) of the State Constitution.

¹⁴ Section 15.21, F.S. (2007), provides that the Secretary of State must immediately submit an initiative petition to the Attorney General and to the Financial Impact Estimating Conference if the sponsor has registered as a political committee under

s. 106.03, F.S.; has submitted the ballot title, substance, and text of the amendment to the Secretary of State under ss. 100.371 and 101.161, F.S.; and obtained a letter from the Division of Elections at the Department of State that the sponsor has met the signature requirements for petition initiatives.

¹⁵ Section 101.161 F.S (2007), provides requirements relating to ballot summary and amendment content for constitutional amendments submitted to the vote of the people.

- Was misleading because it did not inform voters that Art. VII, section 9(b) of the State Constitution, which provides for the millages that can be assessed by various local governments, would be repealed.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to Art. VII, section 9 of the State Constitution, to provide that notwithstanding any other provision in the constitution, the maximum amount of ad valorem taxes collected by counties, municipalities, special districts and school districts may not, when combine, exceed 1.35 percent of a parcel's highest taxable value. "Taxable value" is defined as the value of real property to which millage rates are applied.

Tax revenues collected in excess of the 1.35 percent cap are to be distributed as provided by general law. An exemption is provided for ad valorem taxes levied for the payment of bonds issued pursuant to Art. VII, section 12 of the State Constitution.¹⁶

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions of Art. VII, section 18, Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Art. X, section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote 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 the purpose.

Art. XI, section (5)(e) of the State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, the amendment will take effect in January 2011.

¹⁶ That provision of the Constitution allows counties, school districts, municipalities, and special districts to issue bonds (as well as certificates of participation or any form of tax anticipation certificates) payable from ad valorem taxation and maturing in more than one year only when approved by a vote of the electors to finance or refinance capital projects authorized by law; or to refund outstanding bonds and interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This joint resolution is a cap on local government property tax collections.

B. Private Sector Impact:

The joint resolution preserves the full value of exceptions, homestead exemptions, and the Save Our Homes limitation and portability benefit. The joint resolution does not affect the millage caps enacted by the 2007 Legislature so, to the extent that the proposal caps ad valorem tax collections to a percentage of taxable value, all property owners may see a further reduction in ad valorem taxes.

C. Government Sector Impact:

The Revenue Estimating Conference has not reviewed this proposal. However, the joint resolution does not affect the ability of counties, municipalities, special districts, and school districts to set a millage rate in excess of 13.5 mills in total. Millage rates authorized under Art. VII, section 9 of the State Constitution and established in statute are not capped under the provisions of this joint resolution.

The joint resolution does cap the amount of taxes which may be collected by all local governments in total. To the extent that the Legislature will determine the distribution of excess ad valorem taxes collected, local government ad valorem tax revenues may be further reduced. It is important to note that school districts are not exempt under this proposal.

The joint resolution provides no guidance on how each local government in a geographic area (county/school district) already above the 1.35 percent limit will be affected. Will each local government take a proportionate reduction? If so, will the reduction be off the prior year's millage, off the statutorily capped millage, or off the constitutional millage cap? Will certain local governments (school districts) or services (law enforcement) get more than a proportionate share to guarantee continuation of certain services? The joint resolution also provides no guidance on how future tax revenues collected under the 1.35 percent cap will be distributed among the taxing authorities.

Had this proposal applied to the 2007 property tax roll, the following would have applied:

Total Taxable Value on Real Property statewide:	\$1,707,545,751,082 ¹⁷
Actual taxes levied – all jurisdictions:	\$ 30,983,783,628 ¹⁸
Taxes collected under cap imposed at .0135:	\$ 30,565,502,549

¹⁷ <http://dor.myflorida.com/dor/property/07FLpropdata.pdf> (last visited March 6, 2009)

¹⁸ “Report on the Effect of Recent Changes in Law on the Notice of Proposed Property Taxes”, January 2009, Department of Revenue, pg. 21.

The Florida 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 immediate preceding the week in which the election is held. In 2007, the Department of State, Division of Elections, estimated the average non-recurring cost of compliance to be \$60,000.

VI. Technical Deficiencies:

This joint resolution contains two deficiencies in the proposed ballot summary. On line 65, the summary references “ad valorem taxes levied by counties,” when it should say “ad valorem revenues collected by counties.” On lines 69-70, the summary references “distribution of revenues collected on parcels that exceed the 1.35 percent limitation.” when it should say “distribution of revenues collected from levies that exceed the 1.35 percent limitation.”

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 472004 by Community Affairs on March 17, 2009:

Technical amendment to correct ballot summary language referring to “total aggregate taxes levied by counties” to “total aggregate taxes collected by counties.”