HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 833 Ad Valorem Taxation
SPONSOR(S): Finance & Tax Committee; Diaz, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N	Zaborske	Miller
2) Finance & Tax Committee	14 Y, 1 N, As CS	Dugan	Langston
3) Local & Federal Affairs Committee	15 Y, 0 N	Zaborske	Kiner

SUMMARY ANALYSIS

Downtown Development Authorities (DDAs) are special districts created to plan, coordinate, and assist in implementing, revitalizing, and redeveloping a specific downtown area of a city.

The bill creates s. 189.056, F.S., to provide certain statutory authority to the governing body of a municipality with a population of more than 400,000 that is located in a charter county as defined in s. 125.011(1), F.S. Specifically, the bill:

- Authorizes the governing body to levy up to a 0.475 mill ad valorem tax on the taxable value of real and personal property located in a DDA to finance the DDA's operation.
- Limits such DDA's millage as provided in s. 200.001(8)(d), F.S., which provides that dependent special district millage, when added to the millage of governing body to which it is dependent, shall not exceed the allowable maximum millage for that governing body.

The Revenue Estimating Conference has reviewed this bill and determined that it will have a negative insignificant fiscal impact on local government revenues.

The act shall take effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Downtown Development Authorities (DDAs) are special districts[1] created to plan, coordinate, and assist in implementing, revitalizing, and redeveloping a specific downtown area of a city.[2] Florida currently has 14 active DDAs.[3]

In 1965 the Legislature, with the passage of Chapter 65-1090, Laws of Fla., first authorized DDAs to remediate blighted business areas, halt further deterioration, and revitalize the central business districts of the larger cities where those conditions exist.[4] Chapter 65-1090, Laws of Fla.:

- Authorized municipalities with a population over 250,000 to establish a DDA with certain enumerated powers.[5]
- Provided that DDAs would be governed by a five-member board appointed by the municipality's governing body and chaired by the municipality's mayor.[6]
- Authorized the DDA's governing body to levy up to a 0.5 mill ad valorem tax on all real and personal property in the downtown district.[7]

Chapter 65-1090, Laws of Fla., was enacted under the authority of the 1885 State Constitution. While still under the authority of the 1885 Constitution, using the authority in Chapter 65-1090, Laws of Fla., the City of Miami in 1967 created a DDA, which it authorized to levy an ad valorem tax.[8] Three other DDAs also were created prior to the 1968 Constitution, but they were created by special acts.[9] The City of Miami was the only municipality to create a DDA pursuant to Chapter 65-1090, Laws of Fla.

The 1885 State Constitution, with the exception of county school taxes and county school district taxes (ss. 8 and 10, Art. XII), did not limit the millage a county, municipality, or special district could levy for ad valorem taxes. The Florida Constitution of 1968 added a provision limiting the millage rate for municipalities to ten mills.[10] That same provision also prohibits most special districts from levying ad valorem taxes upon the assessed value of real estate and tangible personal property unless the millage is "approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation."[11] The 1968 Constitution additionally provides that "[t]ax millages authorized in . . . special districts, on the date this revision becomes effective, may be continued until reduced by law"[12] and that "[a]d valorem taxing power vested by law in special districts existing when this revision becomes

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[1] *See* ss. 189.01-189.082, F.S. (the "Uniform Special District Accountability Act," setting forth general provisions for the definition, creation, and operation of special districts).
[2] S. 380.031(5), F.S. (defining "Downtown development authority" as "a local governmental agency established under part III of chapter 163 or created with similar powers and responsibilities by special act for the purpose of planning, coordinating, and assisting in the implementation, revitalization, and redevelopment of a specific downtown area of a city.").
[3] The Special District Information Program within the Department of Economic Opportunity serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function. Dep't of Economic Opportunity, Div. of Cmty. Dev., Special Dist. Accountability Program, *Official List of Special Districts Online*, *available at* https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited 03/15/2015).
[4] Ch. 65-1090, s.1, Laws of Fla.
[5] *Id.*
[6] *Id.* at s. 4.
[7] *Id.* at s.11.
[8] Part II, ch. 14, City of Miami, Code of Ordinances (1965).
[9] Ch. 65-1541, Laws of Fla. (Fort Lauderdale); Ch. 67-1782, Laws of Fla. (Ocala); Ch. 67-2170, Laws of Fla. (West Palm Beach)
[10] FLA. CONST. art. VII, s.9(b).
[11] *Id.*
[12] FLA. CONST. art. XII, s. 2.

effective shall not be abrogated by Section 9(b) of Article VII herein, but such powers, except to the extent necessary to pay outstanding debts may be restricted or withdrawn by law."[13]

The 1968 State Constitution also granted cities and counties broad home rule authority, making general laws of local application, like Chapter 65-1090, Laws of Fla., obsolete.[14] For municipalities, in particular, as the Florida Supreme Court has explained, before the 1968 Constitution grant of home rule power, "municipalities were creatures of legislative grace [and, therefore,] were inherently powerless, absent a specific grant of power from the legislature[; t]he clear purpose of the 1968 revision . . . was to give the municipalities inherent power to meet municipal needs."[15] Further, "[t]he legislature's retained power is now one of limitation rather than one of grace, but it remains an all-pervasive power, nonetheless."[16]

Accordingly, in 1971, the Legislature repealed many general laws of local application passed between 1921 and 1970, including Chapter 65-1090, Laws of Fla.[17] The Legislature declared that those repealed laws "shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as are other ordinances."[18] The Act became effective on May 12, 1971.[19]

The Code of Ordinances for the City of Miami continues to authorize up to a 0.5 mill ad valorem tax on all real and personal property in the downtown district, providing in pertinent part:

> The city commission is authorized to levy an additional ad valorem tax on all real and personal property in the downtown district as described in this article, not exceeding one-half mill on the dollar valuation of such property, for the purpose of financing the operation of the downtown development authority. This levy of one-half mill per dollar ad valorem tax shall be in addition to the regular ad valorem taxes and special assessments for improvements imposed by the city commission.[20]

In 1999, the Legislature established by general law procedures by which the Miami DDA could alter, amend, or expand its boundaries.[21]

Litigation currently is pending challenging the legality of the ad valorem tax levied by the City of Miami's DDA.[22]

Municipal Millage Rates

The State Constitution authorizes municipalities to levy ad valorem taxes, upon the assessed value of real estate and tangible personal property not in excess of ten mills.[23] Municipal millages are composed of a general non-voted millage, a municipal debt service millage, a general voted millage, and a dependent special district millage.[24]

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[13] FLA. CONST. art. XII, s. 15.
[14] Art. VIII, ss.1 & 2(b), Fla. Const. (granting home rule power of counties and municipalities, respectively).
[15] *Lake Worth Utilities v. City of Lake Worth*, 468 So. 2d 215, 217 (Fla. 1985).
[16] *Id.*
[17] Ch. 71-29, s. 2, Laws of Fla.
[18] *Id.* at s. 3(3).
[19] Ch. 71-29, at 117, Laws of Fla. In addition to the DDAs previously mentioned, Delray Beach, by special act, also created a DDA prior to the repeal. Ch. 71-604, Laws of Fla.
[20] Part II, ch. 14, art. II, div. 2, s.14-60, City of Miami, Code of Ordinances (1965).
[21] Ch. 99-208, Laws of Fla. (as codified at s. 166.0497, F.S.).
[22] *Milan Investment Group v. City of Miami*, Consolidated Case No. 3D14-540 (Fla. 3d DCA), docket for each of the four pending cases is available at http://jweb.flcourts.org/pls/ds/ds_cases_person?psReportStyle=Display&psCourt=3&psSearchType=&psHow=contains&psRole=party&pnPersonId=137532&psButton=Submit (last visited 03/17/2015). In *Milan Investment Group v. City of Miami*, 50 So. 3d 662 (Fla. 3d DCA 2011), the court held that the statute of limitations had run to challenge the boundaries of Miami's DDA. The court in that case did not decide the merits of the challenge to the legality of the DDA's levy of ad valorem taxes, but notes that "[t]he City has the authorization, but not an obligation, to impose the special levy of up to half-mill to fund the DDA [and i]t makes that decision year by year." *Id.* at 664.
[23] FLA. CONST. art. VII, s. 9(b). *See* s. 200.081, F.S. ("No municipality shall levy ad valorem taxes against real property and tangible personal property in excess of 10 mills, except for voted levies.").
[24] S. 200.001(2), F.S.

Section 200.001(5), F.S., provides that dependent special district millage shall be that millage rate set by the governing body of a municipality, which shall be identified as to the area covered; as to the taxing authority to which the district is dependent; and as to whether authorized by a special act, authorized by a special act and approved by the electors, authorized pursuant to s. 15, Art. XII, Fla. Const., authorized by s. 125.01(1)(q), F.S., or otherwise authorized.

A dependent special district is any special district that meets at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- All members of its governing body are appointed by the governing body of a single county or a single municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.[25]

In general, an independent special district is a special district that is not a dependent special district as defined above, or a district that includes more than one county unless the district lies wholly within the boundaries of a single municipality.[26] By statute, for the purpose of fixing millage, Miami DDA is treated as an independent special district.[27] The millage rate levied by the Miami DDA for the fiscal year beginning October 1, 2014, and ending September 30, 2015, is 0.4780 mills.[28]

Home-Rule Charter Counties

Section 125.011(1), F.S., defines a county as:

> any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The local governments authorized to operate under a home rule charter by ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, are the city of Key West and Monroe County,[29] Miami-Dade County,[30] and Hillsborough County.[31] Of these, only Miami-Dade County currently operates under a home-rule charter adopted pursuant to these specific provisions.[32]

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[25] S. 189.012(2)(a)-(d), F.S.
[26] S. 189.012(3), F.S.
[27] S. 200.001(8)(e), F.S. (defining "[i]ndependent special district" as "an independent special district as defined in s. 189.012, with the exception of a downtown development authority established prior to the effective date of the 1968 State Constitution as an independent body . . . if the district levies a millage authorized as of the effective date of the 1968 State Constitution[,independent special district millage authorized as of the date the 1968 State Constitution became effective need not be so approved, pursuant to s. 2, Art. XII of the State Constitution").
[28] Office of the Miami Dade Property Appraiser, 2014 Adopted Millage Rates, *available at* http://www.miamidade.gov/pa/millage_tables.asp (last visited 03/15/2015).
[29] FLA. CONST. art. VIII, s. 6, n. 2.
[30] FLA. CONST. art. VIII, s. 6, n. 3. Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County's name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, *available at* https://library.municode.com/index.aspx?clientId=10620 (last visited 4/10/2015).
[31] FLA. CONST. art. VIII, s. 6, n. 4.
[32] County charters can be adopted pursuant to other provisions of the Florida Constitution. *See* FLA. CONST. art. VIII. s. 1. Miami-Dade's charter was adopted on May 21, 1957. Miami-Dade County Florida, *The Home Rule Amendment and Charter*, *available at* http://www.miamidade.gov/charter/library/charter.pdf (last visited Mar. 16, 2015). Hillsborough County adopted a charter form of government in 1983 under Art. VIII, s. 1, of the Constitution of 1968. Hillsborough County Florida, *Home Rule*

Effect of Proposed Changes

The bill provides that the Legislature intends to encourage the revitalization of downtown areas within large municipalities where the societal ills associated with urban blight are more prevalent. However, in recognition of the broad home rule power exercise by charter counties, the provision only applies certain counties. Specifically, the bill provides statutory authority to the governing body of a municipality with a population of more than 400,000 and located in a charter county as defined in s. 125.011(1), F.S. In particular, the bill authorizes the governing body to levy up to a 0.475 mill ad valorem tax on the taxable value of real and personal property in a DDA for the purpose of financing the DDA's operation. The bill limits the millage of such DDA's as provided in s. 200.001(8)(d), F.S. That statutory provision cross-references the definition of dependent special district and provides that dependent special district millage, when added to the governing body to which it is dependent, shall not exceed the allowable maximum millage for that governing body.

B. SECTION DIRECTORY:

Section 1: Creates s. 189.056, F.S., authorizing certain Downtown Development Authorities (DDA) to levy up to a 0.475 mill ad valorem tax on real and personal property for the purpose of financing the DDA's operation, with a limitation on the DDA's millage as prescribed in s. 200.001(8)(d).

Section 2: This act shall take effect July 1, 2015.

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 Revenue Estimating Conference has reviewed this bill and determined that it will have a negative insignificant fiscal impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

Charter, *available at* http://www.hillsboroughcounty.org/DocumentCenter/Home/View/376 (last visited Mar. 16, 2015); *Art. 1, s. 1.01, Charter of Hillsborough County*, *available at* https://www.municode.com/library/fl/hillsborough_county/codes/code_of_ordinances,_part_a?nodeId=CHHICO (last visited 4/10/2015). Monroe County has not adopted a charter form of government. *Monroe County Code of Ordinances*, *available at* https://www.municode.com/library/fl/monroe_county/codes/code_of_ordinances (last visited 4/10/2015).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of s. 18, Art. VII, of the Florida Constitution may apply because this bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate because Miami currently levies a .4780 mill ad valorem tax to finance operation of its DDA, but has been operating under a historical cap of up to .5 mills, and the bill only allows a maximum millage rate of .475 mills. However, an exemption may apply because the bill appears to have an insignificant fiscal impact.

2. Other:

Voter Approval

Section 9(b), Art. VII, of the 1968 Constitution prohibits most special districts from levying ad valorem taxes upon the assessed value of real estate and tangible personal property unless the millage is "approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation."[33] Such approval by the electors would be required for a DDA to levy millage pursuant to any current law.

Those DDA's in existence and lawfully levying an ad valorem tax prior to the 1968 Constitution may have the authority under the Florida Constitution, notwithstanding s. 9(b), Art. VII, of the 1968 Constitution, to levy ad valorem taxes.[34] The 1968 Constitution provides in s. 2, Art. XII, that "[t]ax millages authorized in . . . special districts, on the date this revision becomes effective, may be continued until reduced by law."[35] It also provides in s. 15, Art. XII, that "[a]d valorem taxing power vested by law in special districts existing when this revision becomes effective shall not be abrogated by Section 9(b) of Article VII . . . , but such powers, except to the extent necessary to pay outstanding debts may be restricted or withdrawn by law."[36] It has not been decided in a reported decision whether the 1971 repeal of Chapter 65-1090, Laws of Fla., under this provision would operate as the withdrawing by law of such authority because the repealing law declared that the repealed laws "shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as are other ordinances."[37] If an ad valorem tax levied prior to 1968 is not saved by ss. 2 or 15, Art. XII, of the 1968 Constitution, then it appears that tax may only be levied with electoral approval.[38]

Special Act

The Legislature may enact general acts applicable to all counties and municipalities within the State. However, the State Constitution limits the Legislature's power to enact a special law relating only to Miami-Dade County.[39] Further, Article 3, section 10 of the Florida Constitution provides:

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[33] FLA. CONST. art. VII s.9(b).
[34] *Id.*
[35] FLA. CONST. art. XII, s. 2.
[36] FLA. CONST. art. XII, s. 15.
[37] *Id.* at s. 3(3).
[38] *Cf. Hillsborough County v. Tampa Port Authority*, 563 So. 2d 1108 (Fla. 2d DCA 1990) (holding that because the independent special district possessed taxing powers before 1968, the savings provisions of article XII, sections 2 and 15 of the Florida Constitution apply and the district was authorized to levy or compel the County Board to levy ad valorem tax up to .5 mill on its behalf).
[39] FLA. CONST. art. VIII, s. 11 (1885), retained by reference in FLA. CONST. art. VIII, s. 6(e) (1968). *See State ex rel. Worthington v. Cannon,* 181 So. 2d 346 (Fla. 1965), cert. den. 384 U.S. 981, 86 S. Ct. 1881, 16 L. Ed. 2d 691 (1966) (holding statutes providing for a 23 man grand jury in counties having a population of 750,000 or more and prescribing qualifications and method of selection of grand jury in counties having a population of 750,000 or more are unconstitutional because they apply only to Dade County); *Homestead Hospital, Inc. v. Miami-Dade County*, 829 So. 2d 259 (Fla. 3d DCA 2002) (holding that a statute which allowed "[a]ny county as defined in s. 125.011(1)" to levy a 0.5%

> No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

The Florida Constitution defines a special law as a special or local law.[40] As explained by case law:

> a special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.[41]

Even though the Supreme Court of Florida has recognized that the Legislature has wide discretion in establishing statutory classification schemes,[42] "[a] statute is invalid if 'the descriptive technique is employed merely for identification rather than classification.'"[43] In determining whether the class of persons regulated by a statute is open so as to make the statute a general law as opposed to a special law that requires enactment in accordance with State constitutional provisions, the question "is not whether it is imaginable or theoretically possible that the law might be applied to others, but whether it is reasonable to expect that it will."[44] A general law may contain a classification if that scheme is reasonable and bears a reasonable relation to the purpose of the legislation.[45]

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The State Constitution provides that municipalities 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 this constitution."[46] The bill allows a municipality to levy an ad valorem tax on all real and personal property. Pursuant to the State Constitution, that levy may only be against *tangible* personal property.

The bill says that the DDA's millage may not exceed the limitations contained in s. 200.001(8)(d), F.S., which provides that dependent special district millage, when added to the millage of the governing body to which it is dependent, shall not exceed the maximum millage applicable to such governing body. However, s. 200.001(8)(e), F.S., defines "[i]ndependent special district" as "an independent special district as defined in s. 189.012, with the exception of a downtown development authority established prior to the effective date of the 1968 State Constitution as an independent body . . . if the district levies a millage authorized as of the effective date of the 1968 State Constitution[,independent special district millage authorized as of the date the 1968 State Constitution became effective need not be so

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surcharge to benefit public general hospitals, only applied to Miami-Dade County and, therefore, was an unconstitutional special law).

[40] FLA. CONST. art X, s. 12(g).

[41] *Lawnwood Medical Ctr. Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1st DCA 2007), *aff'd by* 990 So. 2d 503 (Fla. 2008).

[42] *Dep't of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Shelton v. Reeder*, 121 So. 2d 145 (Fla. 1960).

[43] *City of Miami v. McGrath*, 824 So. 2d 143, 150 (Fla. 2002), citing *West Flagler Kennel Club, Inc. v. Florida State Racing Commission,* 153 So. 2d 5 (Fla.1963).

[44] *Dep't of Bus & Prof'l Regulation v. Gulfstream Park Racing Ass'n*, 912 So. 2d 616, 621 (Fla. 1st DCA 2005), *aff'd sub nom. Florida Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n,*, 967 So. 2d 802 (Fla. 2007).

[45] *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515, 520 (Fla. 3rd DCA 1984), ***aff'd*** 464 So. 2d 535 (Fla. 1985) (finding that where the purpose of a law applicable only to those counties listed in s. 125.011(1), F.S., was related to the general tourism industry, the classification was sufficient for the court to find the law was not an improper special law); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259, 260-263 (Fla. 3rd DCA 1992) (finding a law based on the classification in s. 125.011(1), F.S., was a special law because other provisions made clear the law could only apply to Miami-Dade County).

[46] FLA. CONST. art. VII s.9(a).

approved, pursuant to s. 2, Art. XII of the State Constitution." It appears s. 200.001(8)(e), F.S., may conflict with the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2015, the Finance & Tax Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The original bill amended s. 166.0497, F.S., and amendment creates a new section in chapter 189, F.S., pertaining to special districts. The amendment provides legislative intent, reduces the ad valorem millage cap in the original bill from .5 mills to .475 mills, and makes the provision applicable only to certain charter counties with a population of 400,000 or more.

This analysis is drafted to the committee substitute as approved by the Finance & Tax Committee.