

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1015 Determination of Maximum Millage Rates

SPONSOR(S): Local Government Affairs Subcommittee, Nuñez

TIED BILLS: **IDEN./SIM. BILLS:** SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	16 Y, 0 N	Dugan	Langston
2) Local Government Affairs Subcommittee	8 Y, 4 N, As CS	Monroe	Miller
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Property tax rates (i.e., millage rates) are set by local government governing boards each year and applied to local property tax bases to generate funding for local government uses. Since 2007, Florida law provides a formula to determine millage rates each year which may not be exceeded by a county, municipal, or special district governing board except by certain extraordinary votes. The formula sets the maximum millage that can be levied by simple majority vote of the governing board (simple majority maximum tax rate) by assuming the previous year's maximum tax rate was levied, then adjusted by the change in Florida per capita personal income. The actual tax rate is commonly lower than the maximum.

The bill changes the formula for calculating the simple majority vote maximum millage rate. Instead of having a formula which assumes the previous year's maximum rate was levied, the formula would use the prior year's actual levy. The formula change will reduce the simple majority maximum tax rate for most counties, cities, and special districts.

The Revenue Estimating Conference has not met to evaluate this bill. Staff estimates that the impact on county, municipal, and special district property taxes, while indeterminate, will be negative to the extent that governments cannot achieve the extraordinary votes needed to exceed the lower maximum tax rates.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ad Valorem Taxation Overview

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

The Florida Constitution requires that “all ad valorem taxation shall be at a uniform rate within each taxing unit . . .”³ 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.

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 form of taxation. Local governments in Florida, levied approximately \$28.3 billion in Fiscal Year 2015-16.⁴ Ad valorem property tax revenues are also a major revenue source for school districts. Of the \$28.3 billion levied statewide for FY 2015-16, school districts levied approximately \$12.0 billion in property taxes.⁵

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.⁶ The Florida Constitution strictly limits the Legislature’s authority to provide exemptions or adjustments to fair market value.⁷

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, depending on the type of taxing authority.

Counties, Municipalities and Schools

Counties, municipalities, and school districts are each limited to levy up to ten mills (or one percent).⁸ By referendum, local voters may authorize counties, municipalities, and school districts to levy

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 motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes as stated in art. VII, s. 1(b), Fla. Const., and defined in other statutes) capable of manual possession and whose chief value is intrinsic to the article itself.

² Art. VII, s. 1(a), Fla. Const.

³ Art. VII, s. 2, Fla. Const.

⁴ *Florida Tax Handbook*, p. 195 (2016).

⁵ *Florida Tax Handbook*, p. 195 (2016).

⁶ 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.

⁷ Art. VII, s. 4, Fla. Const.

⁸ Art. VII, s. 9(b), Fla. Const.. 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%.

additional mills above the ten mill limitation to repay bonds to finance capital projects and for other purposes for a period of no longer than two years.⁹ Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas where the county is providing municipal-type services, if authorized by general law.¹⁰

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 one mill may be levied for water management purposes,¹¹ except in northwest Florida where the limit is 0.05 mill.¹²

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.¹³ 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).¹⁴

Limits on Growth of Property Tax Levies

In 2007, the Legislature enacted statutory changes¹⁵ that established a maximum millage rate and required most taxing authorities to reduce their millage rates.¹⁶ Exceptions were made for certain fiscally limited governments and for certain types of activities. The legislation created a formula to determine a maximum millage rate that could be levied by a county, municipal, or special district governing board by simple majority vote. Exceeding the maximum would require certain extraordinary votes by the governing board.

The maximum millage rate that most non-school taxing authorities can levy by simple majority vote is a rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied in that year, adjusted by the change in Florida per capita personal income.¹⁷ Local governments are allowed to override the maximum millage rate by extraordinary votes of their governing boards or by referenda of the electorate. A higher rate may be adopted only under the following conditions:

1. A rate of not more than 110 percent of the rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the taxing authority; or
2. A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the taxing authority or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.¹⁸

A taxing authority, by levying less than the maximum millage which could be levied by a simple majority vote, can build up a "cushion" between their actual tax rate and the allowed maximum millage rate

⁹ Art. VII, s. 9(b), Fla. Const.

¹⁰ *Id.*

¹¹ Water management taxes are levied by the water management districts.

¹² Art. VII, s. 9(b), Fla. Const.

¹³ Art. IX, s. 1(a), Fla. Const.

¹⁴ Section 1011.71, F.S.

¹⁵ Ch. 2007-321, Laws of Fla.

¹⁶ Section 200.065(5), F.S.

¹⁷ Section 200.065(5), F.S. Calculation of Florida per capita personal income is to be provided by the Office of Economic and Demographic Research, per s. 200.001(8)(i), F.S.

¹⁸ Section 200.065(5)(a), F.S.

which they could levy. Over time, many taxing authorities have built up large enough cushions that the maximum millage rates have no effect.

In 2015, 35 counties and 64 municipalities had built up a sufficient cushion that the potential maximum rates calculated under the current statute were in excess of the 10 mill constitutional limit for county or municipal purposes.¹⁹ In the same year, of the 574 local governments subject to these requirements, 51 (8.9 percent) required a two-thirds vote to approve their adopted millages, and six (one percent) required a unanimous vote.²⁰ The total taxes levied by these 574 (less one extreme outlier) were almost 27 percent below the taxes that could have been levied at their simple majority maximum tax rates.²¹

Proposed Changes

The bill is intended to change the maximum millage rate that a taxing authority can levy to a rate based on the amount of taxes the taxing authority actually levied in the prior year, as opposed to basing the rate on the maximum rate which could have been levied. That is the maximum millage rate equals the rolled-back rate modified by the change in per capita Florida personal income. If the change in per capita Florida income is negative, then the maximum millage rate equals the rolled back rate.

The bill is intended to prevent taxing authorities from building up a “cushion” which keeps the maximum millage rate limitation from having an effect on their levy in any given year. This would result in more taxing authorities needing to either obtain an extraordinary vote to levy their proposed tax rates, or reducing their tax rate. However, it may also provide a disincentive for taxing authorities to levy less than the maximum millage rate which could be levied by a simple majority vote because doing so would no longer allow taxing authorities to build their cushion, and would limit the amount of taxes which could be levied by a simple majority vote in the following year. Consequently, a taxing authority might increase levies to the maximum tax rate which can be levied by a simple majority and potentially collect more ad valorem revenue than necessary for that fiscal year’s budget.

To illustrate the difference between current law and the intended effect of this bill, consider the following example: In a hypothetical Florida city there are no annexations, no construction, no interest, and no other extraneous economic factors to complicate the annual millage calculation. The city council is quite good at holding the line on taxes and continues to actually levy 5 mills every year, which is the rolled-back rate.

Under current law the maximum millage calculations would work as follows: In 2010, the maximum millage calculation in that year would allow a levy of 6 mills. That is, the current maximum millage calculation would allow the city to levy 20% more than the previous levy without an extraordinary vote. The amount which could be levied by a simple majority vote (the maximum millage) increases each year by the change in personal income. Thus, in 2012 the city could levy 6.53 mills by simple majority vote. By 2015 that figure has climbed to 7.06 mills. By 2017 the city could levy 7.61 mills of taxation, with a simple majority vote, which would be 52% more than the amount levied the year before. Assuming a drop in personal income in 2018 (identical to the drop experienced in 2009), the city could still levy up to 7.22 mills in that year without an extraordinary vote.

Under the change proposed by the bill, the city can only increase its levy by the change in personal income over the previous year. Thus, by a simple majority vote, the city could only increase its levy by 0.8% over the previous year in 2010, by 2.13% over the previous year in 2012, and by 4.6% in 2017. However, in 2018, because of the decrease in personal income, the maximum millage rate is the same as the rolled-back rate of 5 mills.

¹⁹ Department of Revenue, 2015 Maximum Millage Compliance Reports, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp011516.pdf>

²⁰ Department of Revenue, 2015 Maximum Millage Compliance Reports, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp011516.pdf>

²¹ Department of Revenue, 2015 Comparison of Property Taxes Levied, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/comp15.pdf>

In chart form, the example is:

Year	% change in personal income	Actual levy	Maximum levy by simple majority under current law	Maximum levy by simple majority under proposed change
2009		5	6	
2010	0.80%	5	6.05	5.04
2011	5.65%	5	6.39	5.28
2012	2.13%	5	6.53	5.11
2013	2.85%	5	6.71	5.14
2014	1.96%	5	6.84	5.10
2015	3.17%	5	7.06	5.16
2016	3.20%	5	7.29	5.16
2017	4.46%	5	7.61	5.22
2018	-5.14%	5	7.22	5.00

The effective date of the bill is July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 200.065, F.S., to change the calculation of the maximum millage rate of a local government taxing authority other than a school district;

Section 2. Provides an effective date.

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 not met to evaluate this bill. Staff estimates that the impact on county, municipal, and special district property taxes, while indeterminate, will be negative to the extent that governments cannot achieve the extraordinary votes needed to exceed the lower simple majority maximum tax rates.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of property in a taxing authority that reduces its millage rate may experience a lower property tax liability.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b) of article VII of the 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 counties or municipalities have to raise revenues in the aggregate. It is unclear whether the requirement for a supermajority vote to exceed the lower millage limitations resulting from this bill 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 counties and municipalities 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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1 2016, the Local Government Affairs Subcommittee adopted a strike-all amendment to the bill which provides that if the change in the Florida per capita personal income is negative, the maximum millage rate shall be equal to the rolled-back rate. In addition, it amends s. 200.065(5)(a)1., F.S., to change the definition of the maximum millage rate to conform with the change in that definition made in s. 200.065(5)(a), F.S.