

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/SB 1222

INTRODUCER: Community Affairs Committee and Senator Flores

SUBJECT: Millage Rates

DATE: February 14, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1222 reduces the maximum millage rate that counties, municipalities, special districts, or municipal service taxing units may levy without a supermajority or unanimous vote of the governing board.

The bill becomes effective on July 1, 2016.

The Revenue Estimating Conference has determined that the bill will reduce local revenues by an indeterminate amount beginning in Fiscal Year 2016-2017.

**II. Present Situation:**

**Ad Valorem Taxation Overview**

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority

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<sup>1</sup> Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla.

and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."<sup>3</sup> The millage rate (tax rate) is applied to the taxable value to determine the amount of tax due. Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The Florida Constitution requires ad valorem taxation to be at a uniform rate within each taxing unit.<sup>6</sup>

Local governments levied approximately \$28.3 billion in ad valorem taxes in Fiscal Year 2015-16.<sup>7</sup> Of the \$28.3 billion, school districts levied approximately \$12 billion in property taxes.<sup>8</sup>

### **Millage Rate Limitations**

Property tax rates, or millage rates, are set by each taxing authority and vary throughout the state. Millage rates are limited by both the Florida Constitution and by general law.

### ***Counties, Municipalities, and Schools***

The Florida Constitution limits counties, municipalities, and school districts to levies of 10 mills (or one percent).<sup>9</sup> By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the 10-mill limitation to repay bonds to finance capital projects and for other purposes for a period of no longer than two years.<sup>10</sup> Counties providing municipal services may also levy up to an additional 10 mills above the 10-mill county limitation within those areas receiving municipal-type services.<sup>11</sup>

### ***Special Districts***

Independent special district millage rates are limited by the law establishing the district 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. The Florida

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1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> FLA. CONST. art. VII, s. 4.

<sup>6</sup> FLA. CONST. art. VII, s. 2.

<sup>7</sup> Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, 195, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf> (last visited Jan. 28, 2016).

<sup>8</sup> *Id.*

<sup>9</sup> FLA. CONST. art. VII, s. 9. A rate of 1 mill equates to \$1 of tax per \$1,000 of taxable value, or 0.1 percent.

<sup>10</sup> FLA. CONST. art. VII, s. 9.

<sup>11</sup> FLA. CONST. art. VII, s. 9(b); s. 125.01(1)(q), F.S...

Constitution authorizes up to an additional 1 mill to be levied for water management purposes, except in northwest Florida where the limit is 0.05 mill.<sup>12</sup>

### **The Rolled-Back Rate**

Florida uses the concept of a “rolled-back rate” to alert taxpayers to ad valorem tax increases that are caused by property appreciation.<sup>13</sup> 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 excluding certain assessment roll changes.<sup>14</sup> In an appreciating property market, the rolled-back rate is often less than the millage rate levied in the prior year. If a taxing jurisdiction levies a rate in excess of the rolled-back rate, it must advertise the tax rate as a tax increase.<sup>15</sup>

### **Limits on Growth of Property Tax Levies**

In 2007, the Legislature enacted statutory changes<sup>16</sup> that established a maximum millage rate and required most taxing authorities to reduce their millage rates.<sup>17</sup> Exceptions were made for certain fiscally limited governments and for certain types of activities. The legislation created a formula to determine the maximum millage rate that could be levied by a county, municipality, or special district governing board by simple majority vote. Exceeding the maximum requires an extraordinary vote of the governing board.

The maximum millage rate that most non-school taxing authorities can levy by simple majority vote is a rolled-back 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.<sup>18</sup> Local governments are allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. A higher rate may be adopted only under the following conditions:

- A rate of not more than 110 percent of the rolled-back 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
- 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.<sup>19</sup>

In 2015, 35 counties and 64 municipalities had potential maximum rates calculated under the current statute that were in excess of the 10-mill constitutional limit for county or municipal

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<sup>12</sup> FLA. CONST. art. VII, s. 9.

<sup>13</sup> *See generally* s. 200.065, F.S.

<sup>14</sup> Section 200.065(1), F.S.

<sup>15</sup> Section 200.065(3)(a) and (g), F.S.

<sup>16</sup> Chapter 2007-321, Laws of Fla.

<sup>17</sup> Section 200.065(5), F.S.

<sup>18</sup> 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.

<sup>19</sup> Section 200.065(5)(a), F.S.

purposes.<sup>20</sup> In the same year, of the 574 local governments subject to maximum millage rate voting requirements, 51 (8.9 percent) adopted a millage rate that required a two-thirds vote, and six (one percent) adopted a millage rate that required a unanimous vote.<sup>21</sup> The remaining local governments levied a millage that required only a simple majority vote. The total taxes levied by these 574 (less one extreme outlier) were almost 27 percent below the taxes that could have been levied by a simple majority vote.<sup>22</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 200.065, F.S., to change the maximum millage rate that a taxing authority can levy to a rolled-back rate based on the amount of taxes the taxing authority actually levied in the prior year, adjusted for change in per capita Florida personal income, unless the change in per capita Florida personal income is negative, in which case the maximum is the rolled back rate.

**Section 2** provides an effective date of July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>20</sup> Department of Revenue, 2015 Maximum Millage Compliance Reports, *available at* <http://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp011516.pdf> (last visited Feb. 14, 2016).

<sup>21</sup> *Id.*

<sup>22</sup> Department of Revenue, 2015 Comparison of Property Taxes Levied, *available at* <http://sdrftp03.dor.state.fl.us/MaximumMillageData/comp15.pdf> (last visited Feb. 14, 2016).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that CS/SB 1222 will likely reduce local revenues by an indeterminate amount beginning in Fiscal Year 2016-2017.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The impact on county, municipality, and special district property taxes, while indeterminate, will be negative to the extent that governments cannot achieve the extraordinary votes they might need to exceed the lower maximum tax rates.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 200.065 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on February 1, 2016:**

Authorizes a county, municipality, dependent special district, municipal service taxing unit, or independent special district to levy the rolled back rate based on the amount of taxes actually levied in the prior year, without adjusting for a change in Florida per capita personal income, if the change in Florida per capita personal income is negative. A conforming change is also made.

**B. Amendments:**

None.