

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7001 PCB GEAC 07-01 Ad Valorem Tax Millage
SPONSOR(S): Government Efficiency & Accountability Council and Attkisson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	10 Y, 5 N	Levin	Cooper
1) Policy & Budget Council	24 Y, 7 N, As CS	Diez-Arguelles	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The property tax is the largest single tax revenue source for government in Florida. Property taxes levied have increased from \$15.3 billion in 2000 to \$30.5 billion in 2006, an increase of 99%. For the same period, Florida personal income has increased 44% and growth measured by population and inflation has increased by 31%.

HB 7001 creates s. 200.192, F.S., which establishes a millage limitation for ad valorem taxes levied by counties, municipalities, and special districts. Beginning in 2007, these taxing authorities cannot levy a millage rate greater than the “rolled-back rate,” adjusted for the change in the Consumer Price Index over the previous year, unless the rate is approved by a supermajority vote of the governing board. This has the effect of limiting annual property tax revenue growth to CPI inflation plus tax revenues associated with net new construction.

In 2007, taxing authorities will be limited to a millage rate calculated as if the millage limitation had been in effect with FY 2000-2001 as the base year and had been continuously applied thereafter, unless a higher millage is adopted by a supermajority vote of the governing board. In effect, this will require governments to reduce their property tax rates so that revenues will be no greater than if FY 2000-01 revenues had grown no faster than CPI inflation plus tax revenues associated with net new construction. Hospital and Health Care Districts, Children's Services Districts, and Fiscally Constrained Counties are exempt from the millage limitation based on a FY 2000-2001 base year, but are subject to the limitation going forward.

A county or municipality that levies a millage rate exceeding the limitations without complying with the supermajority vote requirement will not be eligible to participate in revenue sharing distributions pursuant to Sections 218.60 – 218.66, F.S. (half-cent sales tax), and pursuant to Section 218.23(3)(e), F.S. (revenue sharing program)

The millage limitations do not apply to ad valorem taxes levied by school districts, levied for the payment of bonds issued pursuant to Section 12, Article VII, Florida Constitution, or levied for periods not longer than 2 years when authorized by a vote of the electors. New taxing authorities that began levying ad valorem taxes after January 1, 1996 and newly created taxing authorities will have five years to establish themselves before the millage limitations apply.

The bill creates new public advertising requirements in s. 200.065(3)(a), F.S., prior to final adoption by a taxing authority of a millage rate that exceeds the limitation.

The bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill limits the millage rates that counties, municipalities and special districts adopt without approval from a 2/3ds vote of the governing board.

EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Ad valorem taxation in Florida

The Florida constitution reserves ad valorem taxation to local governments. The state is prohibited from levying ad valorem taxes on real estate and tangible personal property.¹ Local governments may levy ad valorem taxes subject to the following limitations:

Ten mills for county purposes,
Ten mills for municipal purposes,
Ten mills for school purposes,
Millage fixed by law for a county furnishing municipal services, and
Millage authorized by law and approved by voters for special districts.²

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to the millage limitations.³

The property tax is the largest single tax revenue source for government in Florida, with \$30.5 billion levied in FY 2006 – 07.⁴ Property taxes levied in Florida have grown rapidly in recent years from \$15.3 billion in 2000 to \$30.5 billion in 2006, an increase of 99%. For the same period, Florida personal income has increased 44% and growth measured by population and inflation has increased by 31%.

Unlike most other taxes in the state of Florida, the ad valorem tax does not have a set rate. Instead, the tax rate, or millage rate, is determined by the taxing authority each year. This process begins with the taxing authority considering its budget needs for the coming fiscal year. Then, on July 1, the taxing authority is given an estimate of the taxable value of the property upon which it shall be levying taxes. The taxing authority is also instructed on how to calculate the rolled-back rate for the coming fiscal year.

The rolled-back rate is the millage that would provide the same amount of taxes for the taxing authority that it had during the previous year, and it is computed exclusive of any new construction, major improvements to existing property, or boundary changes. Thus, levying the rolled-back rate typically provides a jurisdiction with higher revenues than it had the year before, even though the tax rate is lower than that of the previous year in most cases.

Under current law, if a taxing authority levies a tax rate in excess of the rolled-back rate, the taxing authority must publish a notice of tax increase. Likewise the Notice of Proposed Property Taxes (TRIM notice) received by each taxpayer shows the difference between the taxes which would be due if the rolled-back rate were levied and the taxes that would be due under the taxing authority's proposed

¹ Art. VII, sec. 1(a), Fla. Const.

² Art. VII, sec. 9, Fla. Const. A mill is equal to \$1 per \$1,000 of value, or .001. A tax rate of 10 mills is equal to 1%.

³ Art. VII, sec. 9(b), Fla. Const.

⁴ Property Tax Reform Committee: Preliminary Report and Recommendations. Presentation to the House Committee on State Affairs, January 24, 2007.

budget. The intent of these measures is to help taxpayers know when the budgets of local taxing authorities are increasing. Because property values in most jurisdictions increase each year, multiplying the increased value by the millage rate from the prior year can result in large property tax revenue increases, even though the tax rate has remained the same. With the tremendous increases in value of real estate in Florida in recent years, property tax receipts have grown greatly while millage rates have remained the same or been slightly reduced.

Current Property Tax Issues

Many assert that the increases in property taxes are not affordable. Extraordinary strength in the Florida real estate market has resulted in the rapid increase of assessed values for real property in Florida. The median house price soared 90% from July 2001 to July 2006.⁵ The fair market value of real property has outstripped taxpayer's growth in income.

The Homestead Exemption is an amendment to the Florida Constitution, originally adopted in 1934 and effective beginning in 1935. The exemption is available to every person having title to Florida real estate and maintaining a permanent residence on the property. The original exemption amount was \$5000. Since 1982, the homestead exemption amount has been \$25,000 for all property tax levies.⁶

The Save Our Homes assessment growth limitation was added to the Constitution in 1992, although its limitations were effective with the 1995 tax roll. It provides that growth in the assessed value of individual homestead parcels may not exceed the lower of 3% or the percentage change in the Consumer Price Index. Save Our Homes has suppressed the taxable value of homestead properties in Florida. In doing so, it has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property.⁷

The Tax Foundation has devised a "State Business Tax Climate Index," which is based on the principle that "the ideal tax system . . . is neutral to business activity."⁸ But the studies conducted by the Department of Revenue, the Office of Economic and Demographic Research, and the Property Tax Reform Committee all conclude that businesses are bearing an unequal share of the ad valorem tax burden. This tax burden may not be conducive to the growth of business in Florida. Indeed the sharp increases in ad valorem taxation on commercial property may discourage business activity in Florida. Several studies have found that commercial and industrial investment tends to be more responsive to tax rates than residential investment. This means that the increasing shift of the property tax burden to businesses may cause them to reduce or eliminate commercial investment – in some instances, leading them to investments in other states where property taxes are less burdensome.⁹

Residential non-homestead property has also been experiencing sharp increases in ad valorem taxation. Owners of these properties are forced to raise rental rates to pay for property taxes. These increases in residential rent further exacerbate the need for more affordable housing in Florida.

Revenue Sharing

⁵ Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007

⁶ Florida's Property Tax Structure: An Analysis of Save Our Homes and Truth in Millage Pursuant to Chapter 2006 – 311, L.O.F. Florida Department of Revenue. January 2, 2007.

⁷

	<u>Percent of Taxable Value</u>	
	Current	Without Save Our Homes
Homestead Property	32.1%	45.5%
Non-Homestead Property	34.5%	28.4%
Non-Residential Property	32.5%	26.1%

Source: Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007.

⁸ Tax Foundation, "State Business Tax Climate Index" presentation to the Property Tax Reform Committee, September 20, 2006.

⁹ Florida's Property Tax Study Interim Report. Legislative Office of Economic and Demographic Research.

Florida has three main revenue sharing programs through which the state shares its revenues with local governments. The major source of revenue shared with local governments in all of these programs is the state sales tax.

Under the Local Government Half-cent Sales Tax Program, counties and municipalities receive 8.9% (approx.) of sales tax collections and collections of the state portion of the communications services tax remitted by dealers within each county. For fiscal year 06-07 counties are expected to receive \$1.2 billion and municipalities are expected to receive \$600 million. Distributions to each eligible county and municipality are based on the taxes remitted by dealers in each county and then apportioned between the county and the cities within each county based on population.

Under the County Revenue Sharing Program, counties receive 2.9% of cigarette tax collections and 2.044% (approx.) of statewide sales tax collections. For fiscal year 06-07, counties are expected to receive \$411.7 million (97% from sales tax and 3% from cigarette tax). Distributions to each county are based on a formula that considers county population, unincorporated county population and county sales tax collections.

Under the Municipal Revenue Sharing Program, municipalities receive 100% of collections from the 1-cent municipal fuel tax, 12.5% of the alternative fuel user decal fee collections, and 1.3409% (approx.) of statewide sales tax collections. For fiscal year 06-07 municipalities are expected to receive \$361.4 million (sales tax: 72.66%; fuel tax: 27.33%; and decal fee: 0.01%). Distributions to each city are based on a formula that considers population, municipal sales tax collections, and a municipality's relative ability to raise revenues.

CHANGES PROPOSED BY THE BILL:

Millage Rates

The bill limits growth in property taxes by restricting the millage rates that taxing authorities may set. Specifically, the bill provides that taxing authorities may not levy a millage rate in excess of the "rolled-back rate," adjusted by the percentage change in the Consumer Price Index in the year ending the previous June. This has the effect of limiting annual property tax revenue growth to CPI inflation plus tax revenues associated with net new construction.

In 2007, millage rates are limited to what they would be if the millage limitation had been in place in with the 2000 - 2001 fiscal year as the base year and had been carried forward from that year. In effect, this will require governments to reduce their property tax rates so that revenues will be no greater than if FY 2000-01 revenues had grown no faster than CPI inflation plus tax revenues associated with net new construction. Hospital and health care districts created pursuant to Chapter 155, F.S., children's services independent special districts created pursuant to Section 125.901, F.S., and counties considered fiscally constrained pursuant to Section 218.67 for FY 2007-08 are exempt from the millage limitation based on a FY 2000-2001 base year, but are subject to the limitation going forward.

The "rolled-back" rate is defined as "a millage rate that, exclusive of new construction, additions to structures, deletions, increases in the value of improvement that have undergone a substantial rehabilitation that increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year."¹⁰ The exclusions contained in the definition of the rolled-back rate are intended to allow a taxing authority to receive additional property tax revenue from growth in the tax base that is not caused by increases in the value of existing properties. For example, new buildings and annexed territory are increases to the tax base that are not caused by increases in value.

¹⁰ Sec. 200.065, F.S.

Taxing authorities may levy a millage rate in excess of the limitation, if the millage rate is adopted by a vote of the greater of at least a majority plus one or two-thirds of the full membership of the governing board.

The millage limitations do not apply to millage rates set by school districts. Also, the millage limitation does not apply to ad valorem taxes levied for the payment of bonds authorized by a vote of the electors pursuant to Section 12, Article VII, of the Florida Constitution, and to ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors. Finally, the millage rate limitations do not apply to taxing authorities until the sixth fiscal year in which property taxes are levied.

Revenue Sharing

A county or municipality that adopts a millage rate greater than the limitation with less than a supermajority vote, will not participate in the local government half-cent sales tax distributions provided under Section 218.60-218.66 and in the revenue sharing distributions provided under Section 218.23(3)(e) during the following fiscal year.

Notice requirements

If a taxing authority proposes a tax levy in excess of the millage limitations, it must publish a notice prior to adopting the millage rate stating that it is proposing to adopt a millage rate in excess of the limitations and that unless the levy is adopted by a supermajority vote, the taxing authority will lose state revenue sharing.

Supremacy Clause

The bill provides that the provisions of this act preempt, control and supersede any provision of general or special law that conflicts with the provisions of this act.

C. SECTION DIRECTORY:

- Section 1. Amends s. 200.065, F.S., to include an additional public notice requirement.
- Section 2. Creates s. 200.192, F.S., which provides millage limitations for property tax levies.
- Section 3. Amends s. 373.536, F.S., to conform a cross-reference.
- Section 4. Sets forth a supremacy clause.
- Section 5. Provides an effective date of July 1, 2007.

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:

Taxing authorities that levy millage rates that do not exceed the limitations set forth in this bill will experience a decline in property tax revenues. If all taxing authorities do not exceed the limitations, the estimated statewide decline in property tax revenues in FY 2007-08 is as follows:

Counties	\$3.3 billion (29%)
Municipalities	\$1.5 billion (38%)
Independent Special Districts	\$1.0 billion (40%)
<u>School Districts</u>	<u>not affected</u>
Total	\$5.8 billion (19%)

A county or municipality that levies a millage rate in excess of the limitation without a supermajority vote will not be able to participate in two state revenue sharing programs.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the provisions of this bill, taxpayers should see a decrease in their property tax liability.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require a county or municipality to spend funds and does not reduce the percentage of a state tax shared with counties and municipalities. Therefore, the provisions of Subsections 18 (a) and (c), Article VII, Florida Constitution, do not apply.

Subsection 18(b), Article VII, 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 municipalities and counties have to raise revenues in the aggregate. This bill limits the millage rates that municipalities and counties can levy by a majority vote of the governing board. However, with a supermajority vote of the governing board, cities and counties can exceed the limitations set forth in the bill.

It is unclear whether the requirement for a supermajority vote to exceed the millage limitations represents a reduction of revenue-raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) was to determine whether the amount of potential revenue available to cities and counties 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) was 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:

A class action lawsuit was filed in February 2007 in the Leon County Circuit Court¹¹ which alleges that the taxes paid by non-resident owners of residential real property in Florida constitute a

¹¹ Case No. 37 2007 CA 000582 filed in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.

disproportionate share of the assessed ad valorem taxes. The lawsuit alleges that the tax burden has a chilling effect on decisions by citizens of the United States to own second homes in Florida and impedes their right to engage in interstate travel and commerce, all in violation of the “dormant commerce clause” of Article I, Section 8 of the United States Constitution and the equal protection clause of the 14th Amendment to the Constitution.

Similar issues were raised in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000). Nonresident taxpayers brought an action challenging the constitutionality of the Florida homestead exemption (and also the Save Our Homes assessment limitation). The District Court of Appeal for the First District of Florida affirmed the ruling of the Leon County circuit court. The court held that the exemption did not violate either the privileges and immunities clause of the Federal Constitution or the “dormant” commerce clause.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 7, 2007, the Government Efficiency & Accountability Council adopted a strike-all amendment which included the text of the Notice of Proposed Tax Increase in Excess of the Millage Limitation included in s. 200.065, F.S. This analysis reflects the changes made by the strike-all.

On March 16, 2007, the Policy and Budget Council adopted a Council Substitute. The Council Substitute made technical changes to the language of the bill; granted new taxing authorities 5 years before the millage limitation are applicable; exempted hospital and health care districts, children’s services districts, and fiscally constrained councils from the millage limitations based on FY 2000-01; and added a supremacy clause. This analysis reflects these changes.