HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PBC 08-11 Property Tax Administration
SPONSOR(S): Policy & Budget Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Policy & Budget Council		Diez-Arguelles	Hansen
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In 2007, the Legislature enacted significant legislation governing the taxation of property. Chapter 2007-321, Laws of Florida, limited local governments' property tax revenue growth by imposing maximum millage rates based upon growth in state-wide per capita personal income and growth in the tax base due to new construction and additions within each jurisdiction.

Chapter 2007-339, Laws of Florida, implemented the provisions of Amendment 1 to the constitution that was approved by the voters January 29, 2008. This amendment increased the homestead exemption by $25,000, except for school district taxes; allowed homestead property owners to transfer up to $500,000 of the Save-Our-Homes benefits to their next homestead (portability); provided a $25,000 exemption for tangible personal property; and limited annual assessment increases for specified nonhomestead real property to 10%, except for school district taxes.

Chapter 2007-339, Laws of Florida, also directed the Department of Revenue (department) to report, by March 1, 2008, the results of the implementation of the millage rate limitations, including issues that may need to be addressed by the legislature and improvements in the information required to be provided by local governments, property appraisers, and tax collectors. The department's report also included issues that have arisen in the implementation of the provisions of Amendment 1.

This bill addresses the issues identified in the department's report. Issues include drafting errors in the legislation, ambiguities, and unforeseen circumstances not addressed in the original bills.

In addition this bill contains special provisions for determining the maximum millage rates for the 2008-2009 Fiscal Year. Amendment 1 to the Florida Constitution, adopted on January 229, 2008, contained provisions that reduced the property tax base. Under current law, local governments will be allowed to levy a millage rate to recover the tax loss due to the loss of tax base by a majority vote of the governing body. This bill will require a two-thirds vote to recover the loss.

Taxing authorities that levy millage rates not exceeding the rates that can be levied by majority vote will experience a decline in ad valorem revenues relative to the millage rates that could be levied by majority vote under current law. If all taxing authorities do not exceed these limitations, the statewide ad valorem tax loss in 2008-09 is estimated to be approximately $1.1 billion.

The bill has an effective date of upon becoming law and applies to the 2008 and subsequent tax rolls, except that the provisions dealing with information to be provided by property appraisers first apply to the 2009 tax roll.
This bill may be a mandate requiring a two-thirds vote of the membership. See Mandates section of analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill limits the property taxes that counties, municipalities and special districts may levy without approval by a two-thirds vote of the membership of the governing body.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 2007-321, Laws of Florida, Implementation Issues

Clarity on voting rules and meaning of "growth"
Sections 200.065 and 200.185, F.S., set maximum millage rates that may be levied by local taxing authorities other than school districts. These rates may be exceeded by greater-than-majority votes of the governing bodies — a 2/3 vote allows up to 110 percent of the maximum rate, and a higher rate may be imposed by a unanimous vote. The language in the statute is not clear as to whether the voting rule applies to just the members present at the meeting where the vote is taken or to the entire membership of the voting body. The statutes also provide that the rolled-back rate on which maximum millage rates are based must be adjusted for "growth" in per capita Florida personal income, but it is not clear if this includes negative growth.

Required millage reduction prior to roll extension
Sections 200.065 and 200.185, F.S., require the property appraiser to notify each taxing authority of its taxable value in late October, just before the tax bills are sent to property owners. If this taxable value is lower than the taxable value the taxing authority used in setting its millage rate by more than 1 percent (for municipalities, counties, school districts, and water management districts) or 3 percent (for all other taxing authorities), the taxing authority is allowed to administratively adjust its millage rate to raise the amount of revenue anticipated when it adopted its millage rate. If the property tax roll has increased, the taxing authority must reduce its millage rates.

This requirement has led to unforeseen difficulties. In many large counties the value adjustment board has not finished its work by the time the tax bills are sent out, and the final tax roll is less than the tax roll on which the tax bills are based. In other counties the tax rolls may increase between the time the millage rates are set and the tax bills are mailed, which triggers the requirement that the taxing authorities repeat the hearing and notice process required in s. 200.065(2)(d), F.S., and advertise that their previous notice was in violation of the law.

Downtown development authorities created before 1968
Sections 200.065 and 200.185, F.S. treat dependent and independent districts differently for the purposes of determining maximum millage rates. Certain downtown development authorities created before 1968 have been determined to be independent districts by the Department of Community Affairs even though they appear to be dependent districts under ch. 189, F.S. This had created ambiguity about these districts' millage limitations.

County required contributions to public hospitals
Sections 200.065 and 200.185, F.S., contain a special provision for adjusting the calculation of the maximum millage for counties authorized to levy
county public hospital surtax and required to make a contribution to the public hospital. This provision applies to Miami-Dade County. The calculation of the adjustment specified in statute, however, is unclear and may lead to future uncertainty as to its application.

Increased revenue through expansion of geographic boundaries

In calculating the rolled-back rate, ss. 200.065 and 200.185, F.S., require an adjustment for property added to a taxing jurisdiction due to geographic boundary changes. This adjustment allows additional revenue to be collected from the newly added property as if it had been included in the previous geographic boundaries of the taxing authority. This additional revenue does not get added in for purposes of calculating the jurisdiction's revenue limitation. This provision does not address the situation in which a county or municipality establishes a new dependent district in a small area and with small total revenue. In future years, this area could be expanded, producing additional revenue from the newly added territory that would be outside the county or municipality's revenue limitation. In another scenario, a county could agree to provide additional services in a municipality through the expansion of an existing MSTU without affecting the revenue limitation of the county and generating additional capacity within the municipality's millage limitations.

Maximum millage and TRIM requirements
Chapter 2007-321, Laws of Florida, created a new process for local governments to determine the amount of millage that may be legally levied under various voting rules. The process by which local governments provide notice of the millage and budget decisions under consideration through advertisements and notice of proposed taxes (TRIM process) was left in place. While some components of the maximum millage calculation are based on components of the TRIM process, the two processes remain separate. For example, in the TRIM process, if a local government proposes to adopt a millage rate greater than the rolled-back rate, it must advertise its proposal as a tax increase. In the maximum millage process, the millage that may be adopted with a majority vote allows an adjustment above the rolled-back rate based on the per capita growth in Florida personal income.

Ch. 2007-339, Laws of Florida, Implementation Issues

Portability: Administrative appeal process
While other provisions of law may allow taxpayers to appeal property appraisers' decisions regarding the transfer of an assessment differential to the Value Adjustment Board, there is no explicit authority for such decisions to be appealed. There is also no specific authority for the review of decisions arising from information provided by the county in which the previous homestead was located if that county is different from the county of the new homestead.

Portability: Transferring assessment differences when no split occurs
In its emergency rules, the department determined that a homestead assessment difference is not split when all current persons residing in a home and receiving the homestead exemption move together to a new homestead with no additional residents. In such situations, 100% of the assessment difference may be transferred (subject to the $500,000 cap and downsizing rules). There are other possible interpretations of current law that could result in the full amount of the assessment difference not being transferred in such circumstances.

Portability: Calculation of assessment difference portion when separating
Current law states that when two or more persons abandon a jointly owned homestead each person is entitled to transfer a share of the assessment difference equal to the assessment difference divided by "the number of owners of the prior homestead." In its emergency rules, the department has stated that this means the number of owners on the deed, not the number of residents qualifying for the homestead exemption. Also, several property appraisers have expressed the concern that the law providing this calculation does not recognize situations where the deed contains specific percentages of ownership by each of the parties.

Portability: Abandoning a homestead without moving
The following situations were brought to the attention of the department. A man and woman who each own a homestead get married and the woman moves into her husband's home and is added to the deed. The assessment difference on the wife's former home is greater than that on her husband's home. For the January 1st following their marriage, the husband wants to abandon his homestead exemption and transfer the wife's assessment difference to the homestead. A similar situation exists when a couple gets a divorce and the husband moves to a new homestead. The husband and wife

want to split the assessment difference on their former home (the wife's current home), but the law requires that the previous homestead be abandoned before a transfer can occur. This could be accomplished if the wife could abandon her homestead as of the January 1st following their divorce and then the husband and wife each transfer their proportionate share (half) of the difference to their respective homesteads.

Portability: Calculation of difference to be transferred where there are overlapping assessment differences

More than one type of assessment limitation differential may apply to the same portion of a property. For example, a home may have both a homestead assessment limitation difference and a reduction in assessed value due to a parent-grandparent addition. Statutory gudance may be needed for the calculation of the amount of homestead assessment limitation difference that can be transferred in such situations.

Portability: Documentation required by transfer applicant

Section 193.155(8)(e), F.S., states that persons requesting the transfer of a homestead assessment limitation difference must provide a copy "of his or her notice of proposed property taxes for an eligible prior homestead or other similar documentation". In its emergency rules, the department established as the primary source of information about the prior homestead a form to be completed by the property appraiser in the county where the prior homestead is located. The notice of proposed taxes for that homestead is not required.

Portability: Reassessment of previous homestead at just value

Section 193.155(8)(d), F.S., states that in order to qualify for an assessment limitation difference transfer, the prior homestead must be "reassessed under subsection (3) or this subsection as of January 1 after the abandonment occurs." Subsection (3) of s. 193.155, F.S., addresses reassessment following a change of ownership. In its emergency rules, based on the reference in the law to being reassessed under "this subsection," the department s stated that this requirement is also applicable if the previous homestead is abandoned even though there was not a change of ownership.

Portability: More than one year delay in filing for portability

The current statute does not address a situation in which a person who qualifies for an assessment difference transfer does not apply in the same year that the homestead exemption on the new home is granted. If a person applies for and receives a homestead exemption and at a later date discovers that an assessment difference could be transferred from a previous homestead, it is likely that under current law the immediately previous homestead would be the current homestead and there would be no difference to transfer. If this issue is addressed legislatively, it is important to specify the year in which the transfer will be deemed to have been made and whether there should be a refund of excess taxes paid.

Homestead Exemption: Sequence of applying multiple exemptions

Because the mew additional $25,000 homestead exemption applies to a specific range of value ($50,000 to $75,000), the sequence in which applicable exemptions, including local option exemptions, are applied is important. In its emergency rules, the department established the order in which multiple exemptions are applied to give the maximum benefit of each exemption to the taxpayer.

TPP: Allocation of freestanding equipment value among taxing districts

The law provides that "owners of freestanding property placed at multiple sites, other than where the owner transacts business, must file a single return." However, the law provides no direction on how the exemption is to be allocated between the taxing jurisdictions where the freestanding property is located. In its emergency rule, the department required that the exemption be allocated to taxing jurisdictions based on the proportion of that taxpayer's value in the jurisdiction. However, as one property appraiser has pointed out, because of the dynamics of the assessment roll such a process might not be workable. Any single change to the value of a taxpayer's tangible personal property, through VAB action or property appraiser's corrections, changes the allocation of taxable value to all jurisdictions in which that

taxpayer operates. In counties with many tangible personal property taxpayers and many tax jurisdictions, calculating final taxable value for each jurisdiction will be difficult.

TPP: Definition of "site where the owner transacts business"
The law currently does not define the term "site where the owner transacts business". This definition is important in determining which sites qualify for a $25,000 exemption. For example, a question might be raised about whether a warehouse where the owner stores equipment qualifies as a site where business is transacted.

TPP: Availability of exemption if return is not timely filed
The law currently provides that the exemption does not apply if a taxpayer whose return is not waived fails to file a tangible personal property tax return. The law, however, is not explicit on whether the exemption applies to a taxpayer who files a late return. A related issue is that the law states that any penalties on a person who received a waiver but whose property value exceeds the exempt amount shall be calculated without regard to the exemption. It is not explicitly stated, however, whether such a person receives the exemption if a return is eventually filed.

TPP: Notification for those whose return is waived
While the requirement to file a return may have been waived, it is still the obligation of the property owner to file a return if the value of the property exceeds $25,000. There is currently no provision in statute that the taxpayer be notified of this requirement or of the potential penalties if a return is not filed when required. Some property appraisers have commented that once the requirement for a return has been waived for accounts valued at $25,000 or less, a notice similar to that now sent to homesteaders in counties with automatic renewal of the homestead exemption should be sent to the owner. The statutes do not currently require such a notice.

TPP: Tangible personal property owners not currently required to file a return
For some types of tangible personal property, property appraisers in some counties do not require the owner to submit an annual return. The property appraiser assesses and bills the owner of the property. Mobile home appurtenances are one example of this. The question is whether the owner in such cases must file a return to qualify for the exemption and whether an initial return in such cases is a prerequisite for the waiver in future years. In its emergency rules, the department provided an "EZ" form to be used, at the option of the property appraiser, to assist taxpayers in such situations.

Non-Homestead 10% Assessment Growth Cap: Application required in 2009
The department reported that it received many comments on the requirement that taxpayers apply for the non-homestead 10% assessment increase limitation. Property appraisers and taxpayers have expressed the concern that, statewide, millions of applications would have to be handled even though only a subset of those might have an assessment increase larger than 10%, and have indicated that there might be more efficient ways of gathering needed information. They are also concerned that the applicability of the assessment increase limitation is not something that the taxpayer knows in advance and many may be denied the benefit of the law if they fail to apply. The limitation first takes effect in 2009 and the department, in its emergency rules, stated that applications do not have to be filed until next year.

Non-Homestead 10% Assessment Growth Cap: Calculation of cap when parcels are split or combined
Increases in property value due to parcel combinations are not currently addressed in the law. Likewise, distribution of any assessment differences when parcels are split is not addressed.

Information Requirements
Sections 193.114 and 193.1142, F.S., require the Department of Revenue to promulgate rules and forms for the preparation of assessment rolls by the property appraiser and require these rolls to be submitted to the department for approval. During the process of drafting Chapter 2007-321 and 2007-339, Laws of Florida, it became clear that the information currently provided by property appraisers to the department is not adequate for the purpose of analyzing proposed changes in property tax laws.

The department was directed to include in its report improvements in the information required to be provided by local governments, property appraisers, and tax collectors, including recommendations of the Revenue Estimating conference for information that would improve the ability to forecast revenues or estimate impacts of proposed changes.

Under current law, the maximum millage rate that a local government can levy is automatically adjusted upwards when there is a loss of tax base. Amendment 1 to the Florida Constitution, adopted on January 29, 2008, reduced the statewide property tax base. Amendment1 increased the homestead exemption by $25,000, except for school district taxes; allowed homestead property owners to transfer up to $500,000 of the Save-Our-Homes benefits to their next homestead (portability); provided a $25,000 exemption for tangible personal property; and limited annual assessment increases for specified nonhomestead real property to 10%, except for school district taxes.

Effect of Proposed Changes

Section 1. Amends s. 193.114, F.S., to include on the tax rolls submitted by the property appraisers to the department data that have been identified by the department and the Revenue Estimating Conference as necessary to improve the ability to forecast revenues or estimate impacts of proposed changes in property tax laws. This applies to 2009 and later tax rolls.

Section 2. Amends s. 193.1142, F.S., to authorize the executive director of the department to require additional data to be provided on assessment rolls, and to require data to be provided in a specified format.

Section 3. Amends subsection (8) of s. 193.155, F.S., to clarify the rules under which a Save-Our-Homes differential may be transferred to a new homestead. The bill provides that if a husband and wife both owned and permanently resided on a homestead each is considered to have received it, even if only one or the other had applied for the exemption on the previous homestead. It also provides that, when two or more persons who were receiving a homestead exemption on a home abandon that home, each may transfer a proportional share of the differential to a new homestead. It allows the transfer of the differential based on the ownership shares contained on the title to the property. It specifies how the transferable assessment differential is calculated for property with an assessment reduction for living quarters of parents or grandparents. Finally, it allows a person to abandon a homestead even though it remains his or her primary residence, and for that residence to again be eligible for portability of the previous differential.

This section also requires the department to provide a form for applying for assessment under the portability provisions, and creates responsibilities for property appraisers to supply information necessary for calculating assessment limitations available to be transferred. It allows a person who is qualified to have his or her property assessed under the portability provisions but who fails to file a timely application to apply to the value adjustment board. It requires the property appraiser to notify a property owner who has applied for assessment under this subsection if the application is not approved.

Section 4. Amends s. 193.1554, F.S., to clarify that any increase in value of nonhomestead residential property that is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.

Section 5. Amends s. 193.1555, F.S., to clarify that any increase in value of certain residential and nonresidential property that is attributable to combining or dividing parcels shall be assessed at just value, and the just value shall be apportioned among the parcels created.

Section 6. Amends s. 193.1556, F.S., to remove the annual application requirement and to require property owners to notify the property appraiser when there is a change in ownership or control of the property or of the legal entity owning the property.

Section 7. Amends s. 194.011, F.S., to specifically authorize a taxpayer who objects to the assessment placed on his or her property, including the assessment of homestead property at less than just value under s. 193.155(8), F.S., (portability) to appeal the assessment to the value adjustment board. If the taxpayer does not agree with the amount of assessment differential identified by the previous property appraiser the appeal is to the value adjustment board in the previous county.

Section 8. Amends s. 196.031, F.S., to provide specific instructions for the order in which homestead exemptions are applied to a single parcel to give the maximum benefit of each exemption to the taxpayer.

Section 9. Amends s. 196.183, F.S., to provide that the $25,000 exemption for freestanding property placed at multiple locations must be allocated in equal amounts to each taxing authority levying a tax on the property. It also provides an expanded explanation of what is meant by the phrase, "site where the owner of tangible personal property transacts business," by listing examples. It provides that the property appraiser may allow owners of certain property to qualify for the tangible personal property exemption without filing an initial return. It clarifies that the tangible personal property exemption does not apply in any year a taxpayer fails to timely file a return that is not otherwise waived, and it requires the property appraiser to notify by mail all taxpayers whose requirement for filing an annual tangible personal property tax return was waived in the previous year.

Section 10. Amends s. 197.3632, F.S., to require the tax collectors to provide information on non-ad valorem assessment rolls to the executive director of the Department of Revenue.

Section 11. Amends s. 200.065, F.S., to clarify that the maximum millage rate is adjusted for change in per capita Florida personal income (instead of growth) and that it is also adjusted for certain changes in geographic boundaries that are not otherwise adjusted for. It clarifies that supermajority votes are based on the membership of the governing body, and provides for administrative adjustments to millage rates when the tax roll changes after the millage rate is calculated. It clarifies the special provision for calculating the millage for a county authorized to levy a public hospital surtax. It provides that for certain downtown development authorities, the governing body of the municipality that approves its millage shall be considered its governing body.

In addition, this bill contains special provisions for determining the maximum millage rates for the 2008-2009 Fiscal Year. Amendment 1 to the Florida Constitution, adopted on January 29, 2008, contained provisions that reduced the property tax base. Under current law, local governments will be allowed to levy a millage rate to recover the tax loss due to the loss of tax base by a majority vote of the governing body. This bill changes the calculation of maximum millage rates to eliminate the automatic adjustment to the allowed millage rates and to require a two-thirds vote to recover the loss of the tax base.

Section 12. Amends s. 200.185, F.S., to clarify that the maximum millage rate is adjusted for change in per capita Florida personal income (instead of growth) and that it is also adjusted for certain changes in geographic boundaries that are not otherwise adjusted for. It clarifies that supermajority votes are based on the membership of the governing body, and provides for administrative adjustments to millage rates when the tax roll changes after the millage rate is calculated. It clarifies the special provision for calculating the millage for a county authorized to levy a public hospital surtax. It says that for certain downtown development authorities, the governing body of the municipality that approves its millage shall be considered its governing body.

Section 13. Authorizes the executive director of the Department of Revenue to adopt emergency rules for the purpose of implementing this act, and says those rules shall remain in effect for 18 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules.

Section 14. Requires the property appraisers to accept applications for assessment under s. 193.155(8) until May 1, 2008.

Section 15. Directs the Department of Revenue to report to the Legislature on tax notification issues arising from recent changes in property tax law.

Section 16. Provides that, except as otherwise provided, this act shall take effect upon becoming a law and shall apply to the 2008 and subsequent tax rolls.

C. SECTION DIRECTORY:

Section 1. Amends s. 193.114, F.S.

Section 2. Amends s. 193.1142, F.S.

Section 3. Amends subsection (8) of s. 193.155, F.S.

Section 4. Amends s. 193.1554, F.S.

Section 5. Amends s. 193.1555, F.S.

Section 6. Amends s. 193.1556, F.S.

Section 7. Amends s. 194.011, F.S.

Section 8. Amends s. 196.031, F.S.

Section 9. Amends s. 196.183, F.S.

Section 10. Amends s. 197.3632, F.S.

Section 11. Amends s. 200.065, F.S.

Section 12. Amends s. 200.185, F.S.

Section 13. Authorizes the executive director of the Department of Revenue to adopt emergency rules.

Section 14. Requires the property appraisers to accept applications for assessment under s. 193.155(8), F.S., until May 1, 2008.

Section 15. Directs the Department of Revenue to report to the Legislature on tax notification issues arising from recent changes in property tax law.

Section 16. Provides that, except as otherwise provided, this act shall take effect upon becoming a law and shall apply to the 2008 and subsequent tax rolls.

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 not exceeding the rates that can be levied by majority vote under this bill will experience a decline in ad valorem revenues relative to the millage rates that could be levied by majority vote under current law. If all taxing authorities do not exceed these limitations, the statewide ad valorem tax loss in 2008-09 is estimated to be approximately $1.1 billion.

2. Expenditures:

The bill reduces property appraisers' work load by repealing the requirement for an application under s. 193.1556, F.S. The bill potentially increases property appraisers' work load to comply with reporting requirements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If all taxing authorities levy millage rates by majority votes, property taxes statewide will be reduced by approximately $1.1 billion, compared to current law.

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. Therefore, the provisions of subsection 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 membership of the governing board, cities and counties can levy a higher millage rate.

It is unclear whether the requirement for a supermajority vote to levy a higher millage 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 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) 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 Department of Revenue is granted emergency rule-making powers to implement the provisions of this bill

C. DRAFTING ISSUES OR OTHER COMMENTS:

.None

D. STATEMENT OF THE SPONSOR:

None required

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES