

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 11-04 Local Government Ad Valorem Tax and Special Assessment Limitation

SPONSOR(S): Finance & Tax Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Wilson	Langston

SUMMARY ANALYSIS

This joint resolution proposes an amendment to Article VII, section 19 and Article XII, section 32 of the Florida Constitution to limit the amount of ad valorem taxes and special assessments that may be collected by counties, municipalities, and special districts from any parcel of real property to 2 percent (the equivalent of 20 mills) of a parcel's highest taxable value. The 2 percent limit would not apply to:

- Ad valorem taxes levied for the payment of bonds maturing more than 12 months after issuance to finance or refinance capital projects authorized by law with the approval of the voters; or
- Ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors.
- Special assessments levied for the payment of bonds.

The proposed amendment also requires the Legislature to enact general laws governing the distribution of all tax and assessment revenues derived from parcels for which the combined ad valorem tax and special assessment levies of multiple taxing authorities exceed 2 percent of the parcel's highest taxable value.

The proposed amendment will be submitted to the electors at the general election in 2012 or at an earlier election specifically authorized by law, and, if approved, will take effect upon 60 percent approval of the electors.

The proposed amendment will take effect beginning in fiscal year 2014-2015.

The Revenue Estimating Conference has not met to evaluate this joint resolution. However, staff estimates this bill will significantly reduce local government revenues on a recurring basis beginning in fiscal year 2014-15.

The Department of State has not estimated the cost of the proposed constitutional amendment. However, a cost will result from placing the joint resolution on the ballot and publishing the notices as required by the Florida Constitution.

This joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Overview of Ad Valorem Taxation

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

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 forms of taxation. The property tax is the largest single tax revenue source for local governments in Florida, with approximately \$26 billion levied in fiscal year 2010-11. Ad valorem property tax revenues are also the primary tax revenue source for school districts. Of the \$26.0 billion levied statewide for FY 2010-11, school districts levied an estimated \$11.3 billion in property taxes.³

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.⁴ The Florida Constitution strictly limits the Legislature’s authority to provide exemptions or adjustments to fair market value.⁵

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.

Counties, Municipalities and Schools

The Florida Constitution limits counties, municipalities, and school districts to levy up to 10 mills (or 1 percent) each.⁶ In effect, the State Constitution establishes a combined 20 mill (2%) limit for general purpose governments (counties and municipalities). By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the ten mill limitation to repay bonds to finance capital projects and for other purposes for a period of not longer than two years.⁷ Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas receiving municipal-type services.

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

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 the vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself.

² Article VII, s. 1(a), Florida Constitution.

³ *Florida Tax Handbook*, 2011. <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf>

⁴ 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.

⁵ Article VII, s. 4, Florida Constitution.

⁶ Article VII, s. 9, Florida Constitution. 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%.

⁷ Article VII, s. 9, Florida Constitution.

limitation applicable to the authority to which they are dependent. Up to 1 mill may be levied for water management purposes, except in northwest Florida where the limit is 0.05 mills.⁸

Limits on Growth of Property Tax Levies

In 2007, the Legislature enacted statutory changes that required most county, municipal, and special district governments to reduce their FY 2007-08 millage rates below their “rolled back rates.”⁹ Exceptions were made for certain fiscally limited governments and for certain types of activities. Local governments were allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. For FY 2008-09 and beyond, the same legislation limited the growth in each county’s, city’s, or independent special district’s property tax levies to growth in state per capita personal income growth plus growth attributable to the value of net new construction added to the tax roll each year. Again, overrides of the limitation are allowed by certain extraordinary votes or referenda.

Overview of Special Assessments

Special assessments are a revenue source commonly used by counties, municipalities and special districts to construct and maintain capital facilities and to fund certain services. The authority to levy special assessments derives both from county and municipal home rule authority under the Florida Constitution, and from state law.

Florida case law establishes two requirements for the valid imposition of a special assessment. First, the assessed property must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. A property can be deemed to derive a special benefit a service or improvement if there is a logical relationship between the service or improvement and the benefit *to the property*.

Special assessments are generally, but not exclusively, collected on the annual ad valorem tax bill. Under this collection procedure, the special assessment is characterized s a “non-ad valorem assessment.”¹⁰

For the 2010-11 local government fiscal year, approximately \$2.5 billion in non-ad valorem assessments were levied.¹¹ Of that amount, \$1.1 billion (45%) was levied by county governments, \$558 million (22%) was levied by municipalities, and \$820 million (33%) was levied by independent special districts.

Proposed Changes

This joint resolution proposes an amendment to Article VII, section 9 and Article XII, section 32 of the Florida Constitution to limit the combined amount of ad valorem taxes and special assessments that can be collected by counties, municipalities, and special districts from any parcel of real property to 2 percent (the equivalent of 20 mills) of a parcel’s “highest taxable value.”¹² However, the 2 percent limit does not apply to:

- Ad valorem taxes levied for the payment of bonds maturing more than 12 months after issuance to finance or refinance capital projects authorized by law with the approval of the voters; or
- Ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors.
- Special assessments levied for the payment of bonds.

⁸ Id.

⁹ 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 making allowances for some tax base changes. See s. 200.065(1), F.S.

¹⁰ Section 197.3632, F.S.

¹¹ Data provided by Florida Department of Revenue.

¹² Some assessment preferences and exemptions do not apply to taxes levied by all taxing authorities. Therefore, a specific parcel may have a different taxable value for school district taxes than for county taxes. Generally, the taxable value used for school district taxes is the highest taxable value.

This joint resolution also requires the Legislature to enact general laws governing the distribution of tax and assessment revenues derived from parcels for which the combined ad valorem tax and special assessment levies exceed 2 percent of the parcel's highest taxable value. While the proposed amendment limits the amount of ad valorem taxes and special assessments that may be *collected* from a property owner, the taxes and assessments *levied* by multiple taxing authorities on a single parcel may exceed 2 percent of the parcel's highest taxable value. If that situation occurs, the allowable tax revenues collected (in other words, the dollars available under the 2 percent limitation) from the parcel owner will be distributed to the taxing authorities levying taxes and assessments on the property as provided by general law.

B. SECTION DIRECTORY:

Not applicable to a joint resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of State has not estimated the cost of the proposed constitutional amendment. However, a cost will result from placing the joint resolution on the ballot and publishing the notices as required by the Florida Constitution.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not met to evaluate this joint resolution. However, staff estimates this bill will significantly reduce local government revenues on a recurring basis beginning in fiscal year 2014-15. Also see FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of real property located in areas of the state where combined millage rates exceed 20 mills will pay less property tax in the future.

D. FISCAL COMMENTS:

The impact of this proposal on individual property owners, cities, counties, and special districts will depend on the combined amounts of property tax and special assessments levied on a particular parcel and on the method chosen by the Legislature to distribute taxes and special assessment collected from properties where the limit applies. For example, for properties located in an area where the combined taxes and assessments levied by all taxing authorities do not exceed the 2 percent limit, there will be no benefit to the property owner and no impact on the taxing authorities.

For properties located where the combined property taxes and special assessments exceed the limit, the property owners will experience a reduction in combined levies actually paid. Local governments in these areas may experience a reduction in revenues, depending on how the Legislature determines that taxes and assessments collected from these properties will be distributed to the levying authorities.

If the Legislature provides for a pro-rata distribution of the taxes and assessments collected, each taxing authority will receive a proportionally reduced amount from what was levied on affected parcels. For example, if the combined levies by taxing authorities amount to 2.5 percent of a parcel's taxable value, each taxing authority will actually collect 80 percent (2%/2.5%) of the taxes and special assessments levied on the affected properties. Alternatively, if the Legislature provides for a priority system to distribute the taxes and assessments collected, some taxing authorities may collect the entire amount levied while others may not collect anything.

The full effect of the proposed amendment will not be known until the Legislature implements it. An unknown number of state laws, rules and policies may be affected by the specific option chosen by the Legislature. Most of this impact – while not quantifiable – would fall on the Legislature and the Department of Revenue, the state agency responsible for property tax oversight. The development, production, and legal costs to the state are expected to be insignificant relative to the overall recurring impact on local property tax revenues.

It is also possible that the state's Truth in Millage (TRIM) process will have to be modified, primarily affecting local governments. The TRIM process currently consists of two public hearings to adopt the tentative and final budgets and the required millage rates to fund them; the TRIM notice (Notice of Proposed Property Taxes) mailed out to taxpayers; and, newspaper advertisements. The timetable and form of each of these components is tightly prescribed by law. The final action is in the form of two votes, first to adopt the millage rate and then to adopt the budget. The amendment may require modification of the current process for some implementation alternatives. The costs associated with a significant change in TRIM procedures cannot be quantified – either positively or negatively.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to House Joint Resolutions.

2. Other:

Article XI, section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose.

Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a constitutional amendment to pass.

B. RULE-MAKING AUTHORITY:

This joint resolution does not require any agency to adopt administrative rules; however, it may be necessary for the Legislature to authorize rulemaking by the Department of Revenue in future implementing legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES