

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1361 w/CS Ad Valorem Tax Levies/Counties

**SPONSOR(S):** Needelman

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2702

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Affairs	8 Y, 0 N	Grayson	Cutchins
2) Local Government & Veterans' Affairs	19 Y, 0 N w/CS	Grayson	Cutchins
3) Judiciary	16 Y, 0 N	Thomas	Havlicak
4) Finance & Tax			
5)			

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### SUMMARY ANALYSIS

The State Constitution provides that counties operating under county charters shall have all powers of local self-government not inconsistent with general law. Chapters 129 and 200, F.S., vest exclusively to county commissions the authority to establish, respectively, the county budget and millage rates. Further, any county may create municipal service taxing units to provide services or facilities commonly provided by municipalities and may levy up to 10 mills in additional ad valorem taxes to pay for the services or facilities.

Several local attempts to place various budget caps into county charters or municipal service taxing unit ordinances have been found unconstitutional as being inconsistent with general law. This bill proposes changes in general law that are intended to support ad valorem millage caps for the state's 19 charter counties and for municipal service taxing units.

This bill amends s. 200.071, F.S., to limit the maximum millage that the state's 19 charter counties and municipal service taxing units may levy to the lesser of 10 mills or the amount specified respectively in a county's charter or a municipal service taxing unit's establishing ordinance.

Additionally, the bill authorizes charter counties to limit their maximum millage and provides:

- That counties may cap, through their charters, the annual growth in ad valorem tax revenues;
- That such caps may not restrict revenue growth below the lesser of 3% or the Consumer Price Index;
- That such caps must allow for emergency or critical needs;
- For a growth rate computation; and
- For budgetary compliance of constitutional and charter officers with the established growth rate cap.

The bill does not appear to impact the state budget, however, it is designed to provide a mechanism to affect revenues of some local governments which may affect the ability to make certain expenditures.

The bill takes effect on January 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1361d.ju.doc

**DATE:** April 15, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

While the bill does not directly lower taxes, it does provide a mechanism by which some local governments and citizens may limit future local government tax increases.

#### B. EFFECT OF PROPOSED CHANGES:

The State Constitution provides that counties operating under county charters shall have all powers of local self-government not inconsistent with general law.<sup>1</sup> Several local attempts to place various budget caps into charter county charters have been found unconstitutional as being inconsistent with general law which vests exclusively in the county commission to establish the county budget (ch. 129, F.S.) and millage rates (ch. 200, F.S.).<sup>2</sup>

Section 125.01(1)(q), F.S., authorizes counties to create municipal service taxing (MSTU) or benefit (MSBU) units for all or any part of the unincorporated area of the county. It is a mechanism by which a county can fund a particular service in a particular geographic area from a levy of ad valorem taxes. The county commission is the governing body of the MSTU.

Chapter 129, F.S., establishes a budget system for each county and mandates that the county commission prepare, approve, adopt and execute for each fiscal year an annual budget for such funds as may be required by law or by sound financial practices and generally accepted accounting principles. This budget controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.<sup>3</sup> Chapter 200, F.S., provides for the determination and levy of tax millage. Similarly, it is the county commission which is given the authority to set the millage rate.<sup>4</sup>

This bill provides the general law basis to support budget caps in county charters and MSTU enacting ordinances.

#### Effect of HB 1361

This bill amends s. 200.071, F.S., to limit the maximum millage that the state’s 19 charter counties and municipal service taxing units may levy to the lesser of 10 mills or the amount specified respectively in a county’s charter or a municipal service taxing unit’s establishing ordinance.

<sup>1</sup> Article VIII, s. 1(g), State Constitution.

<sup>2</sup> *Board of County Commissioners of Dade County v. Wilson*, 386 So.2d 556 (Fla. 1980); and *Charlotte County Board of County Commissioners v. Taylor*, 650 So.2d 146 (Fla. 2d DCA 1995).

<sup>3</sup> Section 129.01(1), F.S. See also: *Board of County Commissioners of Marion County v. McKeever*, 436 So.2d 299, 301-302 (Fla. 5<sup>th</sup> DCA 1983).

<sup>4</sup> Section 200.011, F.S.

Additionally, the bill authorizes charter counties to limit their maximum millage and provides:

- That counties may cap, through their charters, the annual growth in ad valorem tax revenues;
- That such caps may not restrict revenue growth below the lesser of 3% or the Consumer Price Index;
- That such caps must allow for emergency or critical needs;
- For a growth rate computation; and
- For budgetary compliance of constitutional and charter officers with the established growth rate cap.

Florida's 19 charter counties are: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia Counties.

#### Local Budget Cap Attempts - Background

Numerous past local efforts to establish some type of budget cap in county charters have been struck down by the courts as unconstitutional.

Dade County (chartered): In *Board of County Commissioners of Dade County v. Wilson*,<sup>5</sup> the Florida Supreme Court found that ch. 200, F.S., set forth the exclusive manner by which to set countywide millage rates. The Court held that a proposed voter initiative to set a county millage rate at four mills for Dade County for 1980-1981 was unconstitutional.

Marion County (non-chartered): In *Board of County Commissioners of Marion County v. McKeever*,<sup>6</sup> the Fifth District Court of Appeal found that chs. 129 and 200, F.S., contemplated the annual preparation and adoption of the budget and the setting of millage rates by a county commission. This Court struck down a Marion County ordinance that purported to establish a cap of .25 mills of ad valorem tax for the county transportation fund for a period of ten years.

Charlotte County (chartered): In *Charlotte County Board of County Commissioners v. Taylor*,<sup>7</sup> the Second District Court of Appeal found unconstitutional a voter approved amendment to the County's charter to limit the Commission's authority to adopt any millage rate which would result in more than a 3% increase in the total revenue generated over the total ad valorem taxes for the previous year. In so finding, the Court noted the charter amendment was inconsistent with the provisions of chs. 129 and 200, F.S. The Court struck down the charter amendment noting that Art. VIII, s. 1(g), State Constitution, provides that the counties operating under county charters shall have all the powers of local self-government not inconsistent with general law.

Hillsborough County (chartered): Attorney General Opinion 2001-04 opined to the Hillsborough County Board of County Commissioners that a county could not amend its charter to place a cap on the annual increase in the county's operating budget with the provision that the cap may be waived by an affirmative vote of at least six of the seven members of the board of county commissioners.

Brevard County (chartered): Recently, in *Ellis v. Burk*,<sup>8</sup> the Fifth District Court of Appeal struck down a tax cap provision of the Brevard County Home Rule Charter. The provision prohibited the County from increasing its ad valorem tax revenue in any one year by more than the lesser of 3% or the percentage change of the CPI for the previous year, over the previous year's ad valorem revenues without the approval of a majority of the voters at a general or special election. In the decision, the Court stated that "[u]nder our state constitution and statutory scheme, the power to limit a county

<sup>5</sup> 386 So.2d 556 (Fla. 1980).

<sup>6</sup> 436 So.2d 299 (Fla. 5<sup>th</sup> DCA 1983).

<sup>7</sup> 650 So.2d 146 (Fla. 2d DCA 1995).

<sup>8</sup> 29 Fla. L. Weekly D195 (Jan. 9, 2004)

commission's ability to raise revenue for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the [L]egislature."

### Ad Valorem Tax – Defined

Ad valorem taxation is a tax on the fair market value of locally assessed real estate, tangible personal property, and state assessed railroad property, less certain exclusions, differentials, exemptions, and credits. Intangible personal property is excluded since it is separately assessed and taxed by the state.

### Ad Valorem Tax - Background

The ability of local governments to raise revenue for their operations is narrowly constrained by the state constitution.

No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.<sup>9</sup>

With the exception of the ad valorem tax and several constitutionally authorized state-shared revenue programs, local governments are dependent on the Legislature for the authority to levy any other forms of taxation, thereby increasing the relative importance of the ad valorem tax.

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.<sup>10</sup>

Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.<sup>11</sup>

To summarize, local governments may levy ad valorem taxes subject to the following limitations.

1. Ten mills for county purposes.
2. Ten mills for municipal purposes.
3. Ten mills for school purposes.
4. A millage fixed by law for a county furnishing municipal services.
5. A millage authorized by law and approved by voters for special districts.

As stated above, the state constitution provides two exceptions to the ten-mill cap.<sup>12</sup> The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years. Additionally, no property may be subject to more than twenty mills of ad valorem tax for municipal and

<sup>9</sup> Article VII, s. 1(a), State Constitution.

<sup>10</sup> Article VII, s. 9(a), State Constitution.

<sup>11</sup> Article VII, s. 9(b), State Constitution.

<sup>12</sup> *Id.*

county purposes without elector approval, regardless of the property's location, under the state constitution. Duval County-City of Jacksonville is a consolidated government; therefore, it has a twenty-mill cap since it operates as both a county and municipal government.

### Adjustments to the Tax Base

Adjustments to the ad valorem tax base may take one of several forms: exclusions, differentials, exemptions, credits, and deferrals. A brief explanation of the adjustments to the taxable base follows:

Exclusions are specific types of property constitutionally or statutorily removed from ad valorem taxation. The major categories of exclusions include the following.

1. Transportation vehicles such as automobiles, boats, airplanes, and trailer coaches that are constitutionally excluded from ad valorem taxation but subject to a license tax.
2. Personal property brought into the state for transshipment that statutorily is not considered to have acquired taxable situs and therefore is not part of the tax base.

Differentials are reductions in assessments that result from a valuation standard other than fair market value. The valuation standards include the following.

1. Value in current use only (e.g., agricultural value).
2. Value at a specified percentage of fair market value (e.g., the state constitution allows inventory and livestock to be assessed on a percentage basis, although the Legislature has exercised its option to totally exempt such property).
3. Value that results from a limitation on annual increases (e.g., increases in assessments of homestead property are limited to the lesser of 3 % or the CPI up to the fair market value).

Exemptions are deductions from the assessed value that are typically specified as a dollar amount (e.g., homestead exemption of \$25,000). However, certain exemptions are equal to the total assessed value of the property (e.g., property used exclusively for charitable purposes), or are equal to a portion of the total assessment, based on a ratio of exempt use to total use provided that said use must exceed 50 percent (e.g., property used predominantly for charitable purposes).

Credits are deductions from the tax liability of a particular taxpayer and may take the form of allowances, discounts, and rebates. Currently, the only credits allowed in Florida are early payment and installment discounts of not more than 4%.

Deferrals do not reduce the taxpayer's overall tax liability but allow for changes in the timing of payments. Under certain circumstances, a taxpayer may defer a portion of the taxes due on homestead property for the remaining lifetime of the property owner and spouse or until the sale of the property.

### Municipal Service Taxing Unit – Background

Section 125.01(1)(q), F.S., authorizes counties to create municipal service taxing (MSTU) or benefit (MSBU) units for all or any part of the unincorporated area of the county. It is a mechanism by which a county can fund a particular service in a particular geographic area from a levy of ad valorem taxes (MSTU). The county commission is the governing body of the MSTU. Services that are authorized to be funded by MSTUs include:

“...fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal;

drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services...”

Taxes or assessments are levied against property within the MSTU. Non-payment of taxes can result in property liens and eventually, foreclosure.

C. SECTION DIRECTORY:

Section 1. Amends ss. 200.071(1) and (3), F.S., relating to certain limitations on ad valorem tax levies.

Section 2. Provides an effective date of January 1, 2005.

## 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 bill provides discretion to charter counties to limit, through the county charter, the maximum ad valorem millage that may be levied.

2. Expenditures:

The bill provides a mechanism to limit future growth in revenues of some local governments which could lead to a necessary reduction in some expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have the potential to lower taxes for some taxpayers coupled with the potential for a reduction in service delivery.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Florida Association of Counties (FAC): The Florida Association of Counties stated that they had worked with the Sponsor and were satisfied with the bill as amended.<sup>13</sup>

Commissioner Ron Pritchard, D.P.A.: Stated his support of this bill noting that the bill implements the will of the people in 1996 who voted overwhelmingly (85%) to cap property taxes in Brevard County. He stated: "The problem with current law is that it usurped the legislative budgetary prerogative of setting caps and the major reason for its defeat in the courts is Brevard and Manatee counties. Allowing the charter counties the ability to set caps rather than the State would allow the people the tax relief for which they voted."<sup>14</sup>

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2004, the Local Government & Veterans' Affairs Committee adopted one amendment. The Substitute for Amendment 1 removed lines 15 – 19 and inserted language. The amendment removed language which authorizes charter counties to limit their maximum millage and provides:

- That counties may cap, through their charters, the annual growth in ad valorem tax revenues;
- Such caps may not restrict revenue growth below the lesser of 3% or the CPI;
- Such caps must allow for emergency or critical needs;
- Provides for a growth rate computation; and
- Provides for budgetary compliance of constitutional and charter officers with the established growth rate cap.

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<sup>13</sup> Bob McKee, Governmental Liaison, Florida Association of Counties, 4/1/04.

<sup>14</sup> Memorandum to Brevard County Commission, from Commissioner Ron Pritchard, D.P.A., 3/3/04.