

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SB 1508

INTRODUCER: Senator Haridopolos

SUBJECT: Ad Valorem Property Taxes

DATE: February 24, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	<b>Favorable</b>
2.			GE	
3.			GA	
4.				
5.				
6.				

## I. Summary:

This bill allows a charter county to cap its ad valorem taxes in its charter at a rate that is less than the constitutional limit of 10 mills. The cap may not restrict the annual growth rate below the lesser of 3 percent or the Consumer Price Index. Also, the cap may be exceeded if the county commission, by a super-majority vote, makes a finding of necessity due to emergency or critical need.

In addition, the bill specifies how a county shall compute its millage rate when applying a cap in the county charter. Notwithstanding any other provision of law, the bill requires each constitutional and charter officer to comply with the cap in the county charter when preparing a budget to submit to the county commission. Finally, the bill prohibits a county, through a municipal service taxing unit, from exceeding the cap in the ordinance that established such unit.

This bill substantially amends section 200.071 of the Florida Statutes.

## II. Present Situation:

**Ad Valorem Taxation** - Ad valorem taxation is a tax on the fair market value of locally assessed real estate and tangible personal property, less certain exclusions, differentials, exemptions, and credits. The ability of local governments to raise revenue for their operations is narrowly constrained by the state constitution. Article VII, s. 1(a), of the Florida Constitution provides:

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.

The State Constitution caps the millage rates assessed against the value of the property.<sup>1</sup> For counties, municipalities, and school districts, the cap is 10 mills.

Section 200.071, F.S., in part, implements the constitutional millage cap for counties. Subsection (1) provides that except as otherwise provided, counties may not levy more than 10 mills, except for voted levies, against real property and tangible personal property in their jurisdictions. Furthermore, subsection (3) restricts counties from levying more than 10 mills through a municipal service taxing unit against real property and tangible personal property within each such municipal service taxing unit.

**Municipal Service Taxing Units (MSTUs)** - Section 125.01(1)(q), F.S., authorizes counties to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which the following may be provided:

...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 from funds derived from service charges, special assessments, or taxes within such unit only.

This paragraph further provides that if ad valorem taxes are levied, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units may not exceed 10 mills.

**Charter Counties** - The Florida Constitution provides that the state be divided by law into political subdivisions called counties.<sup>2</sup> There are two general types of counties in Florida: charter and non-charter. *Non-charter counties* have home-rule powers as provided by general or special law, and may enact ordinances that are not inconsistent with general or special law.<sup>3</sup> *Charter counties* have all powers of local government not inconsistent with general law or with special law approved by vote of the electors.<sup>4</sup> This ‘special law’ constitutes a local charter, or a “local constitution” that defines the structure, powers and functions of county government. This charter may only be approved, amended or repealed by the county electorate. Approximately 80 percent of all Floridians live in one of the state’s 19 charter counties.<sup>5</sup>

**Recent Efforts to Cap Local Budgets** - Numerous past local efforts to establish some type of millage rate or budget cap in county charters have been struck down by the courts as unconstitutional. Notable cases include the following:

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<sup>1</sup> See Article VII, Section 9 of the State Constitution. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of table value.

<sup>2</sup> Article VIII, s. 1(a) of the State Constitution. Ch. 7, F.S., specifies the physical boundaries of the 67 counties in Florida.

<sup>3</sup> Article VIII, s. 1(f) of the State Constitution.

<sup>4</sup> Article VIII, ss. 1(c) and (g) of the State Constitution.

<sup>5</sup> The 19 charter counties include: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia.

- In *Board of County Commissioners of Dade County v. Wilson*,<sup>6</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.
- In *Board of County Commissioners of Marion County v. McKeever*,<sup>7</sup> the Fifth District Court of Appeals found that chapters 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.
- In *Charlotte County Board of County Commissioners v. Taylor*,<sup>8</sup> the Second District Court of Appeals 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 percent 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 chapters 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.
- 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.
- Recently, in *Ellis v. Burk*,<sup>9</sup> the Fifth District Court of Appeals 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 percent or the percentage change of the Consumer Price Index 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 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."

### III. Effect of Proposed Changes:

The bill amends s. 200.71, F.S., to allow a charter county to cap the growth in its ad valorem taxes at a rate specified in its charter if the amount is less than the 10 mills allowed under s. 9, Art. VII of the State Constitution. However, a cap in the charter may not restrict the annual

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<sup>6</sup> 386 So. 2d 556 (Fla. 1980).

<sup>7</sup> 436 So. 2d 299 (Fla. 5<sup>th</sup> DCA 1983).

<sup>8</sup> 650 So. 2d 146 (Fla. 2d DCA 1995).

<sup>9</sup> 866 So. 2d 1236 (Fla. 5th DCA 2004), *cert. denied*, 879 So. 2d 621 (Fla. 2004).

growth rate at a rate below the lesser of 3 percent or the Consumer Price Index. Also, a county charter with an ad valorem cap must allow for the cap to be exceeded with a finding of necessity due to emergency or critical need by a super-majority vote of the county commission.

In applying the cap in the charter, the county shall compute a millage rate that provides the same ad valorem revenue for each taxing authority as was levied in the prior year. However, this millage rate is “exclusive of any new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation and that increased the assessed value of such improvements by at least 100 percent, and property added due to geographic boundary changes.” This millage rate is subject to the ad valorem cap in the county charter. Notwithstanding any other provision of law to the contrary, each constitutional and charter officer shall comply with any cap in growth for ad valorem taxes in the charter when preparing a budget for submittal to the county commission.

Finally, the bill prohibits a county, through a municipal service taxing unit, from exceeding a millage cap in the ordinance establishing the municipal service taxing unit.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

This bill allows county charters to be amended to restrict the millage rates county governments may impose on property for property tax purposes. In addition, it allows similar restrictions to be imposed by ordinance for MSTUs.

B. Private Sector Impact:

If the electorate chooses to amend their county charter to restrict the millage rates county governments may impose for property tax purposes, property owners will not be subject to millage rate increases above the rate established in the charter.

Likewise, property owners in areas subject to MSTU property taxes will not be subject to millage rate increases above the rate set in the ordinance which established in the MSTU.

C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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