



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires ad valorem taxes to be levied at a rolled-back rate. Adoption of a rolled-back rate will generally cause the taxing authority to have its revenues reduced to the millage in effect for January 1, 2001 plus an adjustment for the applicable Consumer Price Index.

Ensure lower taxes: The bill requires all taxing entities which levy ad valorem taxes to compute a tax rolled-back rate and to publish a "Notice of Proposed Tax Increase in Excess of the Millage Limitation" if the taxing authority proposes a levy in excess of the rolled-back rate as adjusted. The published notice will inform the taxpayers that unless the excess millage levy is adopted by a supermajority vote, the taxing authority may lose state revenue sharing.

### B. EFFECT OF PROPOSED CHANGES:

#### PRESENT SITUATION:

##### Ad valorem taxation in Florida:

Constitutionally, ad valorem taxation is reserved to local government as a source of revenue. 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
- Millage authorized by law and approved by voters for special districts<sup>1</sup>

The Florida Constitution provides two exceptions to the 10 mill cap. The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years.

##### The financial importance of property taxes in Florida's total tax picture:

The property tax is the largest single tax revenue source for government in Florida, with \$30.5 billion levied in FY 2006 – 07.<sup>2</sup> Property taxes in Florida have grown rapidly in recent years from \$16 billion in 2001 to \$30.5 billion in 2006. Since FY 1999 – 00, property taxes have increased by 80 percent, compared to a total personal income growth of 39 percent and inflation plus population growth of 32 percent.

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<sup>1</sup>“Special district” means a special district as defined in s. 189.403(1), F.S. It is a local unit of special purpose, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17 [Indian reservations], municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

“Dependent special district” means a special district as defined in s. 189.403(2), F.S.

“Independent special districts” are defined in s. 189.403(3), F.S., subject to the following limitations: downtown development authorities created prior to the 1968 Constitution; independent special districts levying millage for water management purposes pursuant to s. 9(b), Art. VII, Florida Constitution, and s. 125.01(1) (q) municipal service taxing or benefit units for any part or all of the unincorporated areas of the county.

<sup>2</sup> Property Tax Reform Committee: Preliminary Report and Recommendations. Presentation to the House Committee on State Affairs, January 24, 2007.

Difficulties which have emerged concerning ad valorem taxation:

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.<sup>3</sup> The fair market value of real property has outstripped taxpayer's growth in income. Large price increases have also been experienced in almost every segment of the Florida real estate market including non-homestead residential, commercial, and agricultural.

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.<sup>4</sup>

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 homestead assessed value may not exceed the lower of 3% or the change in percentage 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.<sup>5</sup>

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."<sup>6</sup> 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 the property taxes are less burdensome.<sup>7</sup>

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 the taxes. These increases in residential rent further exacerbate the need for more affordable housing in Florida. Higher rents also mean that it is more difficult for those in rental housing to save the funds necessary to purchase their own home.

Understanding millage and the roll back rate:

Unlike most taxes in the state of Florida, the ad valorem tax does not have a set rate. Instead, the tax rate, known as the millage rate, is determined by the taxing authority each year. This process begins

<sup>3</sup> Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007

<sup>4</sup> 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.

<sup>5</sup>

	<u>Percent of Taxable Value</u>	
	<u>Current</u>	<u>Without Save Our Homes</u>
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.

<sup>6</sup> Tax Foundation, "State Business Tax Climate Index" presentation to the Property Tax Reform Committee, September 20, 2006.

<sup>7</sup> Florida's Property Tax Study Interim Report. Legislative Office of Economic and Demographic Research.

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 roll-back rate for the coming fiscal year.

The roll-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 roll-back rate typically provides a jurisdiction with slightly 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 roll-back rate, the taxing authority must publish a notice of tax increase. Likewise the TRIM notice received by each taxpayer shows the difference between the taxes which would be due if the roll-back rate were levied and the taxes which would be due under the taxing authorities proposed budget. The intent of these measures was to help taxpayers know when the budgets of local taxing authorities were increasing. Because property values in most jurisdictions increase each year, multiplying the increased value by the same millage rate can result in large budget increases, even though the tax rate has remained the same. With the tremendous increases in value of real estate in Florida in recent years, local budgets have managed to grow greatly given the increase in property value while millage rates have remained the same or dropped.

#### The effect of rising real estate values on local government revenues:

Local governmental budgets have increased dramatically over the past few years. Because of the large increases in taxable value, it is frequently not necessary to increase the millage levied. But because of the increase in the value of the property, the taxpayer pays more taxes, even though the millage has remained the same. In general, local government tax rates have fallen, but the decreases in millage have not been sufficient to off-set the tremendous increase in just value.<sup>8</sup>

#### CHANGES PROPOSED BY THE BILL:

##### Establishing a reduced millage rate for FY 2007 - 2008:

HB 7001 tackles the problem of property tax increases by focusing on the tax rate rather than the value of the property subject to tax. Under the provisions of this bill, all taxing authorities would be required to levy a tax rate not in excess of the roll-back rate multiplied by a growth factor, the Consumer Price Index, which is intended to offset inflation. This limitation on the tax rate could only be exceeded by a super-majority vote of the levying body (which consists of at least a majority plus one, or two-thirds of the full membership of the governing body). If millage is levied in excess of this limitation without the requisite super-majority vote, the taxing authority will forfeit any revenue sharing dollars to which it might otherwise be entitled, for the following fiscal year.

Moreover, since taxing authorities have been benefiting from the remarkable increase in property taxes over recent years, the bill would further require that the maximum millage rate which could be levied by the taxing authority for the 2007 – 2008 tax year be based upon their budget for FY 2000 – 2001. These taxing authorities would be limited to levying that tax rate which would be permitted in FY 2007 – 2008 if the provisions limiting millage rates had been in effect during the intervening period.

##### Exceptions to the rolled-back rate:

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<sup>8</sup> In 2005, local governments as a whole levied tax rates approximately 11% above the rolled-back rate; in 2006 the number grew to over 14%. Property Tax Reform Efforts An Update. Office of Economic and Demographic Research, January 11, 2007

Ad valorem taxes levied by school districts, for the payment of bonds, or for periods not longer than 2 years following a vote of the electors are exempt from the rolled-back rate. Taxing authorities that have levied ad valorem taxes for less than 2 years are also exempt. Taxing authorities that began levying ad valorem taxes after January 1, 2001 may not levy ad valorem taxes in excess of the rolled back rate which is calculated beginning with the second full fiscal year in which the authority levied ad valorem taxes.

Publication requirements for a tax increase in excess of the rolled-back rate:

If a taxing authority proposes a tax levy in excess of the reduced millage rate permitted by s. 200.192 (1), F.S., the published public notification prior to a vote being taken on the levy must include a statement that unless the levy is passed by a supermajority vote, the taxing authority may lose state revenue sharing.

Penalties for failure to adhere to the millage limitations:

If a tax levy in excess of the reduced millage is approved by the governing body of the taxing entity without a supermajority vote, counties and municipalities are barred from participation in the local government half-cent sales tax revenue ordinary distribution to eligible counties and municipalities, as well as emergency and supplemental distributions; fiscally constrained counties would also lose eligibility for these funds as well. The revenue sharing would be forfeited for the year in which the excess levy is approved.

Effects of the rolled-back rate:

The bill makes the new tax rate effective for FY 07 – 08, which will result in all Florida property owners seeing a reduction on the next property tax bill they receive. The estimated average statewide savings is 19% per property, although the amount will vary by county.<sup>9</sup>

C. SECTION DIRECTORY:

Section 1. Amends s. 200.065, F.S., to include a public notice provision that a taxing authority (other than a school district) which proposes a tax levy in excess of the millage limitation in s. 200.192, F.S., may lose state revenue sharing.

Section 2. Creates s. 200.192, F.S., which provides millage limitations for tax levies (other than those of school districts). Municipalities and counties which levy millage in excess of the roll-back rate without a supermajority (which consists of at least a majority plus one, or two-thirds of the full membership of the governing body) will be ineligible to participate in the local government half-cent tax distributions provided for in ss. 218.23(3) (e) and 218.60-218.66, F.S., during the fiscal year immediately following the adoption of the excess millage rate.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

<sup>9</sup> Meeting Packet of the House Policy and Budget Council for February 23, 2007 page 125.

If counties or municipalities fail to adopt local ad valorem tax levies in excess of the millage limitations by less than a supermajority vote, these entities will not be permitted to participate in the local government half-cent sales tax distributions provided for in ss. 218.23(3) (e) and 218.60 – 218.66, F.S., during the fiscal year immediately following the adoption of the excess millage rate. These funds would remain in the state treasury, and state expenditures would be reduced.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

Counties and municipalities would experience the loss of local government half-cent sales tax distributions provided for in ss. 218.23(3)(e) and 218.60 – 218.66, F.S., during the fiscal year immediately following the adoption of the excess millage rate. In FY 2004 – 05 distributions totaled \$1.59 billion.<sup>10</sup>

##### 2. Expenditures:

Expenditures by counties and municipalities which fail to adopt local ad valorem tax levies in excess of the millage limitations by less than a supermajority vote will be decreased to the extent that local government half-cent sales tax distributions provided for in ss. 218.23(3) (e) and 218.60 – 218.66, F.S., will not be received and will not be available for expenditure.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers should receive ad valorem tax relief in FY 2007 – 2008. This will create a more favorable climate for business prosperity and expansion. As ad valorem tax rates decrease, there may be an increase in the stock of affordable housing. Decreases in ad valorem taxation should enable individuals to have greater disposable income as well.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision is inapplicable because this bill does not reduce the authority of municipalities and counties to raise total revenues over the levels which existed on February 1, 1989.

##### 2. Other:

A class action lawsuit was filed in February 2007 in the Leon County Circuit Court<sup>11</sup> which alleges that the taxes paid by non-resident owners of residential real property constitute a 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 14<sup>th</sup> Amendment to the Constitution.

In *Reinish v. Clark*, 765 So. 2d 197 (FL 1DCA 2000) nonresident taxpayers brought an action challenging the constitutionality of the Florida state homestead tax. 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

<sup>10</sup> 2006 *Florida Tax Handbook*, p. 176.

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

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.