

STORAGE NAME: h2191.ca

DATE: April 8, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HJR 2191

RELATING TO: Local Taxing Authorities

SPONSOR(S): Representative Feeney

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMUNITY AFFAIRS (PRC)

(2) FINANCE & TAXATION (FRC)

(3)

(4)

(5)

I. SUMMARY:

HJR 2191 is a House Joint Resolution proposed to amend Article VII, Section 9, of the Florida Constitution. The Resolution provides that after January 1, 2001, no county, school district, municipality, or special district may impose, expand the base of, increase the rate of, or repeal an exemption from a tax unless enacted in a separate local rule or ordinance for that purpose only by a three-fifths vote of the membership of its governing body.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot.

There is an estimated fiscal impact of \$47,000 associated with advertising this amendment.

The Resolution provides for the proposed constitutional amendment to take effect January 1, 2001, following the approval of the amendment by the voters of Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Constitutional Provisions Governing Local Government Taxes

Florida's Constitution reserves all authority to tax, except the authority to levy the ad valorem tax, for the state. Article VII, section 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 Florida Constitution, expressly authorizes counties, school districts, and municipalities to levy ad valorem taxes, and allows the legislature to authorize special districts to levy ad valorem taxes. Article VII, section 9(a), of the Florida Constitution provides:

"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."

The Florida Constitution limits the millage of ad valorem taxes. Article VII, section 9(b), of the Florida Constitution, provides as follows:

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.

In summary, the constitutional millage limits are:

- Ten mills for county purposes;
- Ten mills for municipal purposes;
- Ten mills for school purposes;
- A millage fixed by law for a county furnishing municipal services; and
- A millage authorized by law and approved by voters for special districts.

The statutory guidelines for the determination of millage are specified in s. 200.001, F.S. Two exceptions are provided to the ten mill cap. The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years.

County Millages

County government millages must be composed of four categories:

- General millage is the nonvoted millage rate set by the county's governing body.
- Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to s. 12, Art. VII of the state constitution.
- Voted millage is the rate set by the county's governing body as authorized by a vote of the electors pursuant to s. 9(b), Art. VII of the state constitution.
- County dependent special district millage as provided in s. 200.001(5), F.S. Such millage is included as county millage for the purposes of the ten mill cap.

Municipal Millages

Municipal government millages must be composed of four categories of millage:

- General millage is the nonvoted millage rate set by the municipality's governing body.
- Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to s. 12, Art. VII of the state constitution.
- Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to s. 9(b), Art. VII of the state constitution.
- Municipal dependent special district millage as provided in s. 200.001(5), F.S. Such millage is included as municipal millage for the purposes of the ten mill cap.

School District Millages

School district millages must be composed of five categories:

- Nonvoted required operating millage is that rate set by the school board for current operating purposes and imposed pursuant to s. 236.02(6), F.S.
- Nonvoted discretionary operating millage is that rate set by the school board for those operating purposes other than the required local millage rate authorized in s. 236.02(6), F.S., and the nonvoted capital improvement millage authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.
- Nonvoted capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.
- Voted operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to s. 9(b), Article VII of the state constitution.
- Voted debt service millage is the rate set by the school board as authorized by vote of the electors pursuant to s. 12, Art. VII of the state constitution.

Independent Special Districts Millages

Independent special district millages must be that rate set by the district's governing body and must be identified as to whether:

- The millage was authorized by a special act approved by the electors pursuant to s. 9(b), Art. VII of the state constitution; authorized pursuant to s. 15, Art. VII of the state constitution; or otherwise authorized.
- The tax is levied countywide, less than countywide, or on a multicounty basis.

Local Government Taxes Authorized by General Law

As noted, local taxes other than ad valorem taxes, may be authorized by general law. Examples of such taxes include:

- Local Option Sales Taxes;
- Municipal Gas Tax;
- Local Option Motor Fuel Taxes;
- Public Service Tax;
- Tourist Development Taxes;
- Convention Development Tax;
- Dade County Local Option Food and Beverage Tax;
- Local Occupational License Tax;
- Hazardous Waste Tax;
- Dade County Documentary Stamp Tax; and,
- Municipal Pari-Mutuel Tax;

The method of imposition and the allowed uses of generated revenues are governed by statutory provisions and vary from tax to tax.

Non-Tax Local Government Revenues

All local government revenue sources are not taxes requiring general law authorization under Article VII, section 1, of the Florida Constitution. The judicial inquiry, when a county or municipal revenue source is imposed by ordinance, is whether the charge meets the legal sufficiency test for a valid fee or assessment. If not, the charge is a tax and general law authorization is required. If not a tax under Florida case law, the imposition of the fee or assessment by ordinance is within constitutional and statutory home rule power of municipalities and counties.

Constitutional Provision for Amending the Constitution

Article XI, Section 1, of the Florida Constitution, provides the Legislature the authority to propose amendments to the Constitution by joint resolution voted on 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 Secretary of State's office or may be placed at a special election held for that purpose.

C. EFFECT OF PROPOSED CHANGES:

HJR 2191 is a House Joint Resolution proposed to amend Article VII, Section 9, of the Florida Constitution, to provide that after January 1, 2001, no county, school district, municipality, or special district may impose, expand the base of, increase the rate of, or repeal an exemption from a tax unless enacted in a separate local rule or ordinance for that purpose only by a three-fifths vote of the membership of its governing body.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This resolution has no effect on state revenues.

2. Expenditures:

Article XI, section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately \$47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This resolution has no direct effect on local government revenues.

2. Expenditures:

This resolution has no effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This resolution has no direct economic impact on the private sector.

D. FISCAL COMMENTS:

HJR 2191 proposes an amendment to the Florida Constitution to be submitted to the electors of Florida for approval or rejection. While the joint resolution has no fiscal impact on local government revenues, passage of the proposed amendment could have a significant fiscal impact on local government revenues in the future. The effect of requiring a three-fifths vote for the governing body of a county, school district, municipality, or special district to impose, expand the base of, increase the rate of, or repeal an exemption from a tax is not known. However, the proposed amendment does impose a higher constitutional

threshold of approval required for a governing body to take actions necessary to increase tax revenues.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith