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Summary of Property Tax Cuts, Changes to Home Rule and Property Tax Reform as Adopted by the Legislature in the 2007 Special Session B

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The Legislature adopted a significant property tax reform plan during Special Session B that consists of two components. HB 1B¹ statutorily rolls back property tax rates levied by counties, municipalities and independent special districts and caps them on a going forward basis, unless the caps are overridden by an extraordinary vote of the governing body or by referendum. Failure to adhere to the rollback and cap will result in substantial financial penalties for local governments. The other component offers a constitutional amendment to the electorate at the Presidential Preference Primary on January 29, 2008 that will provide (1) a mandate that the Legislature restrict property tax increases by counties, municipalities and independent special districts, (2) large increases to the homestead exemption, (3) a choice for existing homesteaders to switch from the existing Save Our Homes protection to the new super homestead exemption, and (4) targeted tax relief for certain types of properties.

Preliminary estimates show that the statutory cap reduces local government revenues by \$2.2 billion in 2007-08 and \$15 billion over five years. In addition, the reductions in the tax base provided in the constitutional amendment will reduce local government revenues by \$3.6 billion in 2008-09 and \$16 billion over five years. The constitutional amendment also reduces school property tax revenues by an estimated \$1.6 billion from the Legislature's required local effort tax and the school boards' local tax. HB 1B, the statutory cap legislation, does not affect school property taxes.

STATUTORY CAP: HB 1B

The statutory cap bill imposes property tax rollbacks and caps on cities, counties and independent districts for 2007-08, but not on school taxes. If the constitutional amendment passes, HB 1B mandates additional property tax cuts for 2008-09. Regardless

¹ HB 1B (enrolled), as passed by the Legislature and approved by the Governor, can be obtained at the following website: www.flsenate.gov.

of whether the constitutional amendment passes, beginning 2009-10, HB 1B provides a cap on property tax levies in the future, limiting increases to the percentage change in per capita Florida personal income, plus new construction. A higher rate may be levied in any fiscal year only with an extraordinary vote of the governing body, as defined in the bill, or by referendum. The requirements for the rollback and cap differ slightly each year, and are dependent on whether the voters approve the constitutional amendment.

2007-08 ROLLBACKS AND CAPS

For 2007-08, the statutory cap bill directs counties, municipalities and independent special districts to rollback property tax levies to the 2006-07 levels and to subtract an additional percentage reduction as established in the legislation. The percentage reductions are based on the relative per capita property tax increases from 2001-02 to 2006-07 and range from zero percent to nine percent. Counties and municipalities with highest increases in per capita property tax revenues over the period must make the largest tax cuts in 2007-08. The chart shows the percentage reduction factors for the categories of counties and cities based on per capita growth in property taxes from 2001-02 to 2006-07.

REVENUE GROWTH COMPARED TO STATE AVERAGE		
Reduction Factor	Counties	Cities
3%	-5% to -3%	-6% to -4%
5%	-3% to -1%	-4% to -1%
7%	-1% to +1%	-1% to +0.8%
9%	+1% or more	+0.8% or more

COUNTIES AND CITIES OF SPECIAL FINANCIAL CONCERN

HB 1B establishes two percentage reduction categories for certain small counties that meet the definition of “counties of special financial concern,” which means a county considered fiscally constrained pursuant to s. 218.67, Florida Statutes, and for which one mill of property taxes will raise less than \$100 per capita.” Lines 619-621². This definition includes all small counties that are currently defined as fiscally constrained counties, except Gulf County and Franklin County. Small counties with an annual growth in property tax revenues of no more than 5 percent were assigned a zero percent reduction. Those small counties meeting the definition which had an increase greater than 5 percent were put into the 3 percent reduction category. Similar consideration was given to municipalities of special financial concern, which is defined as “a municipality within a county of special financial concern or a municipality that has been at any time since 2001 in a state of financial emergency pursuant to s. 218.503,” Florida Statutes. Lines 626-630.

² All line references in the section are to HB 1B, as enrolled.

EFFECT OF THE PERCENTAGE REDUCTION AND NEW CONSTRUCTION

HB 1B limits total county property tax levies in 2007-08 to the taxes levied in 2006-07 minus the percentage reduction. The bill requires the rolled back rate to be calculated according to current law, s. 200.065(1), Florida Statutes. The rolled back rate is a millage rate calculated on the value of the 2007-08 property tax roll (minus certain value, such as new construction) that will generate the same amount of revenues as the 2006-07 levy. From the rolled back revenues, HB 1B requires the subtraction of the percentage reduction. That resulting millage rate is then applied to the entire tax roll, including the value excluded for the purpose of computing the rolled back millage rate: the value of new construction, increases in value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, and substantial increases in tangible personal property value.

CAP'S EFFECT ON AGGREGATE LEVIES

For counties, the percentage reductions apply to county-wide levies, and to each municipal service taxing unit ("MSTU") and dependent district. However, the property tax levies for the county-wide levy, an MSTU or a dependent district may exceed the maximum rate as long as the total taxes levied by the county do not exceed the maximum levy. Lines 814-822. For municipalities, the percentage reductions apply to city wide levies and to each dependent district. The maximum for any one may be exceeded by simple majority vote when the total municipal taxes levied by the city do not exceed the maximum levy. Lines 814-822.

EXCLUSIONS AND INDEPENDENT SPECIAL DISTRICTS

Excluded from the rollback and percentage reduction are the following:

- (1) Voted millage that is pledged to the retirement of debt;
- (2) Voted millage levied for a period not longer than two years (line 626) and
- (3) Millage levied by municipalities and independent special districts which have levied millage for less than five years. Line 823-826. All other independent special districts are subject to a three percent reduction. Line 729-732.

EMERGENCY MEDICAL SERVICES AND FIRE MUNICIPAL SERVICE TAXING UNITS AND DEPENDENT DISTRICTS

HB 1B classifies municipal service taxing units ("MSTUs") and dependent districts, the predominate function of which is to provide emergency medical or fire rescue services, as

independent special districts for 2007-08. Lines 746-753. EMS and fire services MSTUs and dependent districts created by July 1, 2007 and those created within the last five years are not subject to a rollback or percentage reduction. Other EMS and fire service MSTUs and dependent districts must take a three percentage reduction from the rollback rate. HB 1B does not define “predominate function.” According to Miriam Webster’s dictionary, “predominant” means: “1: having superior strength, influence, or authority: prevailing 2: being most frequent or common.” The three percentage reduction for EMS and fire service MSTUs is in lieu of the percentage reduction for total county or city ad valorem taxes. The Department of Revenue (“DOR”) has adopted an emergency rule to explain this issue: DOR Emergency Rule 12DER07-06, available on the DOR website: www.myflorida.com/dor.

2007-08 OVERRIDES

Pursuant to the newly created statutory section 200.185, Florida Statutes, an override of the tax cuts is allowed for cities, counties and independent districts. To exceed the reduced tax level by an amount up to the level of 2006-07 revenues requires two-thirds vote of the governing board. To exceed the 2006-07 revenues to the level of taxes achieved with 2006-07 tax millage rate requires unanimous vote of the governing board. However, for counties with a governing body that is nine or more members, the override voting requirement is three-fourths of the members. To go above this level requires voter approval. Line 669.

As a practical matter, it will be difficult to secure voter approved in time for the start of the 2007-08 fiscal year, as an election requires 30 days published notice pursuant to Section 100.342, Florida Statutes. The budget adoption calendar does not appear to contemplate this amount of additional notice prior to adopting a millage rate.

In all instances, taxes from new construction are not affected. Revenues from new construction can be added without an override.

PENALTIES FOR EXCEEDING THE CAPS IN ANY YEAR

HB 1B provides substantial financial penalties for city or county which exceeds the maximum millage cap. If a county or city exceeds the maximum rate without the required extraordinary votes, it will not receive Half-Cent Sales Tax Revenue distributions for a 12 month period, regardless of the amount expected to be generated by the unauthorized millage rate. Lines 540 and 423. The local government must also publish a notice, in boldface type and capital letters that its millage rate “Has been determine by the . . . [DOR] to be in violation of the law.” Lines 478-480. In addition, the Tax Collector is required to hold the amount over the cap in escrow for the next budget year when the excess revenues shall be used to reduce property taxes. Line 451. HB 1B provides no penalty for an independent district that exceeds the maximum rate.

2008-09 STATUTORY CAP IF THE CONSTITUTIONAL AMENDMENT IS APPROVED

If the constitutional amendment passes, the property tax base will be reduced by the amount of the new super homestead exemptions and the targeted relief. HB 1B directs a further tax cut and cap adjustment in 2008-09 in that event. Counties, cities and independent special districts will not be allowed to increase tax rates to offset reductions in the tax base without an extraordinary vote. Line 1683.

HB 1B limits the 2008-09 revenues to the rolled back rate, which is the revenues received in 2007-08, adjusted for the percentage change in Florida personal income. The 2007-08 tax levies are then applied to a fictitious 2008-09 tax base calculated as though the constitutional amendment did not pass. The resulting rolled back millage rate then becomes the maximum rate for 2008-09.

EFFECT OF THE 2008-09 STATUTORY CAP IF 2007-08 LEVY IS BELOW THE REQUIRED REDUCTION

If a governing body does not adopt the maximum rate in 2007-08, but instead adopts a lower millage rate, it begins calculating the 2008-09 maximum millage rate based on the actual tax levies in 2007-08. Line 1679. In other words, if the local government cuts tax levies in 2007-08 by more than required by HB 1B, it cannot increase its tax levies in 2008-09 to the maximum allowed in 2007-08 without an override, as the new maximum for 2008-09 is calculated based on the actual 2007-08 levy and not the 2007-08 maximum rate.

2008-09 TAX CUT OVERRIDE IF THE CONSTITUTIONAL AMENDMENT PASSES

Override of revenue losses from the tax cuts are allowed, but the language in HB 1B is confusing and contradictory as to what is required. One provision states that to exceed the reduced tax level to recover up to of the revenue loss due to the base reduction requires a 2/3 vote of the governing board. Line 1706. To exceed that amount requires a unanimous vote of the governing board (or 3/4 vote of the governing body if it has nine or more members) or a referendum Line. 1712. The other provision states that a 110 percent increase in the roll back rate, adjusted by growth in personal income may be adopted if approved by a 2/3 vote of the governing body. Lines 1697-1701. A rate in excess of that may be adopted if approved by unanimous vote or by referendum. The Legislature will no doubt clarify this provision before the 2008-09 fiscal year starts for local governments.

2008-09 TAX CUT IF THE CONSTITUTIONAL AMENDMENT DOES NOT PASS

HB 1B limits the rate of increase in property tax levies in the event that the constitutional amendment does not pass. The bill requires the county, city and independent district to calculate a millage rate on the 2008-09 tax base (minus new construction and other exclusions) that will produce the same revenues as in 2007-08, plus per capita income growth, but minus any amounts over the maximum rate that may have been approved by the override provision. Line 759-767. Thus, if a county overrides in 2007-08, it must reduce property tax revenues even further in 2008-09 unless it overrides the maximum rate again.

2008-09 OVERRIDES IF THE CONSTITUTIONAL AMENDMENT DOES NOT PASS

Override of the tax cuts is allowed. The county, municipality or independent special district may increase the rollback rate by 110 percent, adjusted by growth in personal income, if approved by a two-thirds vote of the governing body. Lines 1697-1701. A rate in excess of that may be adopted if approved by unanimous vote or by referendum. However, for counties with a governing body that is nine or more members, the override voting requirement is 3/4 of the members.

TAX CAP IN 2009-10 AND THEREAFTER

Beginning in 2009-10 and thereafter, a local government may adopt the rolled-back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied, adjusted for growth in per capita Florida personal income, unless a higher rate was adopted in the prior year, in which case the maximum is the adopted rate from the pervious year. Lines 330 *et seq.* As always, the new maximum rate will apply to the entire tax base, including new construction.

OVERRIDES IN 2009-10 AND THEREAFTER

A local government may adopt a higher rate by following the voting requirements in HB 1B. To adopt a rate of 110 percent or less of the rolled-back rate based on the previous year's maximum millage rate, adjusted for growth in personal income and new construction, two-thirds of the governing body members must approve. A higher rate may be adopted if approved by a unanimous vote of the governing body (or three-fourths if the governing body has nine or more members) or if the rate is approved by referendum. Lines 345-354.

EFFECT ON TAX INCREMENT FINANCING (“TIF”) AND COMMUNITY REDEVELOPMENT AUTHORITIES (“CRAs”)

HB 1B does not hold CRAs harmless from the tax cut and the percentage reduction requirements for 2007-08. If a local government reduces its millage because of HB 1B, millage-based payments to CRAs will be reduced in 2007-08 and thereafter under the effects of HB 1B.

The Legislature gave a slight nod to CRAs and TIF in the bill. HB 1B defines “dedicated increment value” (Line 178, *et seq.*) and requires that the full amount of the dedicated increment value over the base year creating the TIF or CRA be excluded in the calculation of the taxable value for determining the rolled back rate, just like the value of new construction is excluded in the calculation. Lines 246-256. HB 1B also requires that the actual CRA or TIF payment be deducted from the tax revenues received in the prior year for purposes of calculating the rolled back millage rate. See line 258. One of the practical effects is to neutralize newly created CRAs and TIF payments. If a local government has a high amount of its increased value within a CRA, relative to its value county-wide, this provision in HB 1B may also have the effect of increasing the rolled back rate compared to the calculation of a rolled back rate without the special consideration in the bill for CRAs and TIFs.

AFFORDABLE HOUSING AND WORKING WATERFRONT

HB 1B also implements the constitutional amendment authorizing the affordable rental housing property tax exemption and the tangible personal property tax exemption. It does not implement the working waterfronts provision.

CONSTITUTIONAL AMENDMENT PROPOSING TAX REFORM: SJR 4B

On January 29, 2008 voters will decide whether to approve SJR 4B, the constitutional amendment proposing tax reform. For the amendment to be adopted, it must receive approval by 60 percent of the voters voting on the question. Art. IX, s. 5(e), Fla. Const. SJR 4B³ requires the Legislature to restrict property taxes levied by counties, cities and independent special districts. It also includes a new super homestead exemption, an additional low-income senior exemption, and taxable value limitations on affordable housing and working water fronts and a partial exemption for tangible personal property. The amendment repeals Save Our Homes (“SOH”) and the existing \$25,000 homestead

³ SJR 4B (enrolled), as passed by the Legislature and approved by the Governor, can be obtained at the following website: www.flsenate.gov.

exemption, except that homesteaders currently protected by the cap on allowable taxable value assessment increases under Save Our Homes will continue to enjoy that protection and the \$25,000 homestead exemption until they decide to switch to the new super homestead exemption.

HOME RULE DIMINISHMENT

The Florida Constitution currently requires the Legislature to authorize counties and cities to levy property taxes. Art. VII, s. 9, Fla. Const. The constitutional amendment adds a new provision to Article VII, section 9 which states: “By general law, the legislature shall limit the authority of counties, municipalities and special districts to increase ad valorem taxes.” P. 11, lines 5-7.⁴ This provision will put the State Legislature much more power in determining the property tax rates. It will affect local government ability to meet the demands of local citizens and shift the property tax balance from home rule to state rule.

NEW SUPER HOMESTEAD EXEMPTION

SJR 4B repeals the existing \$25,000 homestead exemption and replaces it with an increased exemption based on a percent of just value in two different increments. The new super homestead exemption will equal 75 percent of the first \$200,000 in just value, plus 15 percent of the value between \$200,000 and \$500,000. The minimum exemption is \$50,000, under SJR 4B. The proposed amendment indexes the 15 percent \$500,000 value cap by the growth in Florida per capita personal income. The amendment also authorizes the Legislature to increase the \$500,000 cap by a two-thirds vote of the membership of each house. P.7, line.28.

SAVE OUR HOMES (“SOH”): CHOICE

Each person currently enjoying a SOH benefit will continue to receive the \$25,000 homestead exemption and the SOH assessment benefit on that homestead until the person makes an *irrevocable choice* to switch to the new super homestead exemption or the home is sold or ceases to become that person’s homestead. P.11, line 10. Upon making the choice, the homesteader will switch to the new super homestead exemption.

LOW-INCOME SENIORS

Low-income seniors are guaranteed a minimum exemption of \$100,000 instead of the regular minimum of \$50,000, within the structure of the new, increased super homestead exemption. P.7, lines 15-16. This is in addition to the up to \$50,000 exemption that may be granted by cities and counties under current law for low income seniors. See, s.

⁴ All page and line references in the section are to SJR 4B, as enrolled.

196.075, Fla. Stat. The indexed \$20,000 income threshold and escalator to qualify for the new \$100,000 exemption is the same as the current local option additional exemption for seniors 65 years and older.

AFFORDABLE HOUSING

SJR 4B grants the Legislature authority to provide for the assessment of property used for affordable housing at less than fair market value. The amendment requires that to qualify the property must be subject to rent restrictions imposed by a governmental agency. P.6,lines 12-16. Implementing language in HB 1B provides for an application process. Certain defined rental properties that receive federal or state assistance and are rent-restricted will be assessed on the basis of their income. HB 1B lines 1235-1489.

WORKING WATERFRONTS

SJR 4B grants the Legislature authority to provide for the assessment of waterfront property at less than fair market value. P. 6, lines.17-27. Qualifying properties include:

- Land used exclusively for commercial fishing purposes,
- Land open to the public that is used predominantly for commercial water-dependent activities and
- Land used for public access to the water.

The Legislature did not implement the working water fronts provision. It may do so at any legislative session if the voters approve the constitutional amendment.

TANGIBLE PERSONAL PROPERTY

The constitutional amendment authorizes the Legislature by general law to grant a *minimum* exemption of \$25,000 in value for tangible personal property. P. 3, lines 24-27. HB 1B implements this provision and grants an exemption for the first \$25,000 in value for each commercial taxpayer in the county. SJR 4 B allows the Legislature to increase the minimum exemption at any legislative session if the voters approve the constitutional amendment.

EFFECT ON SCHOOL TAXES

SJR 4B will reduce the property tax base for school tax purposes with the targeted relief and the super homestead exemption. However, unlike HB 1B's requirement that cities, counties and independent districts not to increase millage rates to make up tax base loss, HB 1B imposes no similar requirement on school taxes. The Legislature is not prohibited by either HB 1B nor SJR 4B from increasing the required local effort to fund public schools. It would be ironic if the Legislature choose to increase the state's millage at the

same time it requires cities, counties and independent districts to lower theirs. The millage that school boards may levy is already capped at two mills under current law. See s.1011.171(2), Fla. Stat. HB 1B imposes no further restriction to reduce millage or latitude to increase millage. Therefore, the local school board millages will generate less property tax revenues because of the reduction in the tax base if SJR 4B is approved by the voters.

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