Legislative Special Session 2007 B Summary
Property Tax Reform

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I. Summary

The Florida Legislature adopted a property tax relief and reform package during the 2007B Special Session. The package consists of three bills, one proposing constitutional changes (SJR 4B), one enacting legislative changes (HB 1B), and one establishing the election date for the proposed constitutional amendments (HB 5B). According to a publication released by Representative Ray Sansom on Friday, June 15th, the measures could provide as much as $32 billion in taxpayer savings over the next five years. The statutory reforms provide an immediate $15.6 billion statewide property tax cut for 2007, and the potential for an additional $16 billion savings beginning in 2008 if voters approve the constitutional measure.

The immediate tax relief comes at the price of cutting local government revenues. All cities and counties will be required to rollback their tax revenue to the 2006-2007 levels and then to further cut up to 9 percent more. The additional cuts are tied to a tiered system in which local governments are required to cut 3, 5, 7 or 9 percent depending on the historic growth in tax rates. In future years, local government tax revenue increases will be capped at an amount tied to new construction and to growth in Floridian's personal income. Override of the caps will be allowed only by supermajority vote of the governing body or by referendum.

The proposed constitutional amendment creates a new "super" homestead exemption increasing the exemption to 75 percent of the first $200,000 of the home's just value, rather than assessed value, and 15 percent of the home's just value between $200,001 and $500,000. The $500,000 upper limit can be increased by action of the Legislature. Otherwise, it is adjusted yearly based on personal income growth. The constitutional amendment guarantees a minimum homestead exemption of $50,000, and for qualified low-income seniors, $100,000.

II. Statutory Changes

A. Millage Roll-back and Caps

FY 2007-2008

House Bill 1B reduces the ad valorem taxes levied by local governments in FY 2007-2008 to a specified percentage of the rolled back rate for 2006-2007. This means the ad valorem taxes levied for FY 2007-2008 will be less than that levied in 2006-2007. The percentage varies based on the compound annual growth rate in total county ad valorem taxes per capita between FY 2001-2002 and 2006-2007. The following percentage reductions apply to counties, dependent special districts and municipal service taxing districts:

Compound Annual Growth Rate	Percentage of 2006-2007 Rolled-back rate
Less than 7 percent	97 percent
Greater than 7, but less than 9 percent	95 percent
Greater than 9, but less than 11 percent	93 percent
11 percent or greater	91 percent

A county of special financial concern whose compound annual growth rate was no more than 5 percent, is authorized to levy 100 percent of the 2006-2007 rolled-back rate. All other counties of special financial concern are authorized to levy 97 percent. A county of special financial concern is defined as a "fiscally constrained county" for which 1 mill will raise less than $100 per capita.

All dependent and independent special districts, as well as municipal service taxing units, whose primary function is to provide emergency medical or fire/rescue services are subject to a three percent cut, in addition to the rolled-back rate of the 2006-2007 fiscal year. The taxes levied by the qualifying dependent special districts and municipal service taxing units will not be included in the calculations of the millage reduction for the county or city.

Exceeding the Cap

Counties and dependent special districts may levy 100 percent of the rolled-back rate for the previous year by a 2/3 vote of the governing body. By unanimous vote, the governing body may levy the non-voted millage rate from FY 2006-2007. The vote requirement to levy the FY 2006-2007 non-voted millage is reduced to 3/4 if the governing body has 9 or more members. If the governing body has approved the higher maximum millage rate by supermajority vote, then a voter referendum may be conducted to approve an even higher levy of ad valorem taxes.

It is also important to note that the bill contains a provision whereby any county or city can levy in the aggregate the sum of the maximum levies by each jurisdiction within the county or city. Therefore, any given jurisdiction can exceed its maximum if it is offset by another jurisdiction within it levying less than its maximum.

FY 2008-2009

The bill provides alternative revenue limitations for FY 2008-2009 depending on whether the proposed constitutional amendment (SJR 4B) is approved. If the constitutional amendment is not approved, the maximum millage rate that may be levied is the rolled-back rated adjusted for personal income growth minus any override amount approved in the prior year by a supermajority vote. If the constitutional amendment is approved, the taxable value used in the calculation of the rolled-back rate must be increased by an amount necessary to offset the taxable value decrease in properties associated with the "super" homestead exemption and tangible personal property exemption. This provision is intended to prevent shifting the tax burden onto non-homestead property through millage rate increases.

The maximum millage limitation may be exceeded as follows: (1) up to 110 percent of the rolled-back rate by 2/3 vote of the governing body; and (2) any rate exceeding 110 percent requires a unanimous vote, again, unless the governing body is composed of 9 or more members, for whom a 3/4 vote is required.

FY 2009-2010 and Beyond

Maximum millage rates for counties, municipalities, municipal service taxing units and all special districts (dependent and independent) are calculated the same for FY 2009-2010 and beyond. The maximum is the rolled-back rate adjusted for growth in Florida personal income. The maximum may be exceeded as follows: (1) up to 110 percent of the rolled-back rate by 2/3 vote of the governing body; and (2) any rate exceeding 110

percent requires a unanimous vote, unless the governing body is composed of 9 or more members, for whom a 3/4 vote is required.

Exemptions

Voted millages[1] are exempt from the caps and are not included in the rolled-back calculations. Likewise, taxes levied by a municipality or independent special district that has levied ad valorem taxes for less than five (5) years are excluded. However, there is no protection for levies to repay bonds which are not approved by referendum. The legislation does not apply to sources of revenue other than ad valorem taxation.

Treatment of Community Redevelopment Agencies ("CRAs")

The bill provides a lengthy definition of dedicated increment value which, in summary, is the proportion of the increase in a taxable property's value dedicated to a CRA redevelopment trust fund or to be paid pursuant to an ordinance or agreement to fund or finance essential infrastructure. The definition is used in modifications to the calculation of rolled-back rate in s. 200.065, F.S. Generally, rolled-back rate is achieved by computing the millage rate, exclusive of new construction, which produces the same tax revenue for the taxing authority as was levied during the prior year. The changes first exclude the "dedicated increment" from the computation of rolled-back rate in the same manner as new construction. Then, the dedicated increment is deducted from the amount of ad valorem tax revenue to produce the rolled-back rate. The effect of the changes is to neutralize the impact of dedicated increment growth, but does nothing to help ensure that local governments with CRAs or similar tax increment financings (TIF) actually have the money to pay their obligations to the CRA or the TIF district. There will be continued efforts to improve the position for CRAs in upcoming legislative sessions, perhaps as early as another special session which is currently being urged on auto insurance issues.

Implementation, Enforcement and Penalties

Counties in violation of the caps, or vote requirements to exceed the caps, will forfeit distributions from the local government half-cent sales tax revenues for a year following a determination of violation. Determinations of noncompliance will be made by the

[1] "Voted millage" means ad valorem taxes in excess of maximum millage amounts authorized by law approved for periods not longer than two years by vote of the electors pursuant to section 9(b), Article VII of the State Constitution or ad valorem taxes levied for purposes provide in section 12, Article VII of the State Constitution. Voted millage does not include levies approved by voter referendum not required by general law or the State Constitution. *See* §200.001(8)(f), Fla. Stat.

Department of Revenue (DOR). The bill contains procedures for dealing with a notice of non-compliance from DOR, including notice and advertising requirements for a hearing.

The bill creates a process by which DOR notifies each local government of the information on which it will base calculations of compound annual growth rate, and the local government has an opportunity to review and raises any objections or corrections to that information. The bill requires DOR to supply the information to property appraisers and local governing bodies by June 25, 2007 and requires jurisdictions to respond before July 2, 2007.

DOR is authorized to adopt emergency rules to implement the bill which they do intend to use. These emergency rules may remain in effect for 18 months after adoption and be renewed during rule adoption proceedings. DOR is also authorized to extend deadlines and timeframes in the bill and current rules for local government millage and budget adoption processes to the extent they are inconsistent with implementation of the bill. Extensions may not exceed 21 days.

B. Assessment of Affordable Housing

The bill substantially rewrites statutory authority for Community Land Trusts ("CLTs") to acquire property and construct homes for individuals and families meeting specified income limits. The bill changes how property owned and used by CLTs for affordable housing will be assessed. The bill authorizes the classification and assessment of certain other rental workforce housing and affordable rental housing properties based on its character and use, and authorizes certain properties to be assessed on an income basis. Property owners will be required to submit an application to the property appraiser for the classification.

<u>CLTs</u>

The conditions of the ad valorem assessment of affordable housing include conveyance of the affordable housing structure to qualified persons or families for a minimum 99-year lease, ground lease provisions which ensure that the housing remains affordable, including the preemptive option of the CLT to purchase the housing at a formula specified in the lease. Provided the CLT meets these requirements, the property will be assessed per the market value provisions in the ground lease. Further, the ground lease, if recorded in the public records, will be considered a land use regulation applicable to the property during the term of the lease, effectively allowing the reduction in assessed value. Finally, the bill expands the ad valorem tax exemption for

affordable housing property held by a non-profit corporation to include properties owned by a limited partnership, the sole general partner of which is a non-profit entity.

Workforce and Affordable Rental Housing

In response to overwhelming public testimony, the Legislature included in the property tax reform plan authority for property appraisers to assess workforce rental housing and other affordable rental housing based upon its character and use. Properties eligible for classification as workforce rental or affordable rental housing include (1) HUD funded and rent-restricted units; (2) housing funded and rent-restricted through Florida Housing Finance Corporation, SHIP or HOME programs, or the Federal; Home Loan Bank's Affordable Housing Program for multifamily, commercial fishing workers and farmworkers, families, the homeless, or the elderly; and (3) multifamily rental property of 10 or more units certified by a local public housing agency that 100 percent of the units provide affordable housing for extremely-low, very-low, low- or moderate-income persons and is subject to recorded agreements restricting the use of the property for 20 or more years. For properties receiving tax credits from the Florida Housing Finance Corporation, the bill requires the properties be assessed based on an income approach and specifies that the property appraiser determine actual net operating income based on the following: (1) the actual rental income from rent restricted units, (2) exclude tax credits and any financing generated by tax credits, and (3) exclude costs paid with tax credits and the costs paid with any additional financing received through tax credits.

III. Proposed Constitutional Changes

SJR 4B proposes significant changes to the Florida Constitution including the homestead exemption based upon percentage of value (known as the "super" homestead exemption), a tangible personal property exemption, and authority to the Legislature to assess affordable housing and working waterfront property by general law. The constitutional amendment language also grants the Legislature unrestricted authority to limit local government authority to increase property taxes which has raised questions about the Legislature's existing authority to do so.

If approved by 60 percent of the voters in a special referendum election on January 29, 2008, the changes will take effect retroactively to January 1, 2008.

A. Homestead Exemption

The Constitutional amendment provides for an increase in the homestead exemption. It will exempt 75 percent of the first $200,000 in just value, and 15 percent of the just value over $200,000 up to $500,000. The $500,000 upper limit is automatically increased each year based on the change in per capita Florida income, and may be increased in any year by a 2/3 vote of the Legislature. The joint resolution guarantees a minimum exemption of $50,000, and $100,000 for qualified low-income seniors in jurisdictions which previously implemented the additional homestead exemption.

Save Our Homes ("SOH")

Although there was much discussion during both the Regular and Special 2007 Sessions about increasing, revising or scrapping the SOH three percent cap on homestead property tax increases, the bill retains the existing cap. However, homestead owners will be given the option to choose whether to remain under the SOH cap or elect the new "super" homestead exemption. The joint resolution provides homestead owners a one-time irrevocable election of the "super" homestead exemption, but does not provide a timeframe for this election.

B. Tangible Personal Property Exemption

Section 3 of the joint resolution provides the general law authority to exempt *not less than $25,000* of the assessed value of tangible personal property from ad valorem taxation. Earlier versions of the joint resolution provided authority for a maximum $25,000 tangible personal property tax exemption. As approved, the joint resolution set a minimum threshold which may be increase by vote of the Legislature without referendum approval.

C. Working Waterfronts and Affordable Housing

Section 5 of the joint resolution provides the authority to assess by general law property that provides affordable housing and is subject to rent restrictions imposed by a governmental agency.

This section also provides the authority to assess by general law property used for commercial fishing purposes or that is open to the public and used predominantly for water-dependent activities or for public access to navigable waters. The joint resolution defines "water-dependent activities" as those that can be conducted only on, in, over, or

adjacent to navigable waters and that require direct access to water and involve the use of water.

IV. Special Election Date

HB 5B establishes January 29, 2008 as the special election for consideration of the constitutional amendment proposed in SJR 4B. The election will be held concurrently with Florida's presidential primary election. The date was chosen strategically as more out-of-state owners will be residing in Florida for the winter. It will be interesting to see if that factor actually influences the outcome of the election, and whether significant increases in voter registrations occur.

This bill was required to be approved by 3/4 of both the House and Senate and was contingent upon the passage of the joint resolution. HB 5B was approved unanimously in both chambers.