

LOCAL GOVERNMENT FISCAL RESPONSIBILITY CONCEPT LANGUAGE OVERVIEW

Purpose

The draft language contains several elements with an overarching purpose to increase the fiscal responsibility of local governments. This is accomplished by:

- Prohibiting property tax increases unless certain excess unencumbered fund balances are eliminated.
- Prohibiting the enactment, extension or increase in local option taxes unless the levying entity had not increased property taxes in any of the previous 3 years.
- Requiring referenda for local option taxes that are approved by voters under current law, including some property taxes, to be held only at a general election. Further, such referenda would require a sixty percent vote for approval.
- Requiring that new tax-supported debt (broadly defined) that pledges revenues beyond 5 years to be first approved by referendum, subject to the same election restrictions included for taxes above.

General Provisions

The concept language creates Part IX of Chapter 218, F.S., titled the “Local Government Fiscal Responsibility Act.” It also amends several provisions of current law. The substantive provisions of the concept language are explained more fully below.

Property Tax Increases: *Spend Excess Balances*

Current Law

Constitutional Provisions

The Florida Constitution reserves ad valorem taxation to local governments. The State is prohibited from levying ad valorem taxes on real and tangible personal property.¹ The Florida Constitution further requires that counties, municipalities and school districts be authorized to levy ad valorem taxes by law. Special districts *may* be authorized by law to levy ad valorem taxes. The constitution also prohibits the levy of ad valorem taxes in excess of the following:

- Ten mills for county purposes,
- Ten mills for municipal purposes,
- Ten mills for school purposes,
- One mill for water management purposes, except in Northwest Florida where the limit is .05 mill,
- Millage authorized by law approved by voters for special districts.²

¹ Art. VII, sec. 1(a), Fla. Const.

² Art. VII, sec. 9, Fla. Const. A mill is equal to \$1 per \$1,000 of value, or .001. A tax rate of 10 mills is equal to 1%.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations.³ Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas receiving municipal-type services.⁴

The Rolled-Back Rate

Chapter 200, F.S., is titled “Determination of Millage” and generally governs the process, procedures and limitations on the establishment of millage rates by units of local government with ad valorem taxing authority.

A key concept is the “rolled-back rate,” as defined in s. 200.065(1), F.S., which is:

[A] millage rate which, exclusive of new construction, additions to structures, deletions, increases in the value of improvements that have undergone a substantial rehabilitation which increased the assessed value of such improvements by at least 100 percent, property added due to geographic boundary changes, total taxable value of tangible personal property within the jurisdiction in excess of 115 percent of the previous year's total taxable value, and any dedicated increment value, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year less the amount, if any, paid or applied as a consequence of an obligation measured by the dedicated increment value.

The rolled-back rate is important because if a local government levies a property tax rate in excess of the rolled-back rate, such levy must be characterized as a tax increase in the authorizing resolution or ordinance and in the advertisement required prior to adoption of a final millage rate and budget.⁵

Maximum Statutory Millage Rates

Chapter 200 also sets forth maximum millage rates applicable to counties, municipalities, and special districts. In 2007, the Legislature enacted statutory changes⁶ that established a maximum millage rate by requiring most taxing authorities to reduce their millage rates below their rolled-back rates.⁷ Exceptions were made for certain fiscally limited governments and for certain types of activities. The same legislation created a formula to determine a maximum millage rate (and implicitly a maximum revenue) that could be levied by a county, municipal, or special district governing board by simple majority vote. Exceeding the maximum would require the governing board to achieve certain extraordinary votes.

³ Art. VII, sec 9(b), Fla. Const.

⁴ Section 200.065(5)(b), F.S.

⁵ Sections 200.065(2)(d) and (3)(a).

⁶ Ch. 2007-321, Laws of Fla.

⁷ Section 200.065(5), F.S.

The maximum millage rate that most non-school taxing authorities can levy by simple majority vote is the rolled-back rate based on the previous year's maximum millage rate, adjusted by the change in Florida per capita personal income.⁸ Local governments are allowed to override this maximum rate by extraordinary votes of their governing boards or by referendum. A higher rate may be adopted only under the following conditions:

- A rate of not more than 110 percent of the rolled-back rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the taxing authority; or
- A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the taxing authority or by a three-fourths vote of the membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.⁹

Unencumbered Excess Fund Balances

There is no current expression in Florida statutes of the concept of "unencumbered excess fund balances" as is created in the concept language and is described more fully below. Similar concepts do exist, though for different purposes. For example, Part IV of Chapter 218, F.S., is titled "Investment of Local Government Surplus Funds." The purpose of that part as described in s. 218.401, F.S., is "to promote, through state assistance, the maximization of net interest earnings on invested surplus funds of local units of government, based on the principals of investor protection, mandated transparency, and proper governance, with the goal of reducing the need for imposing additional taxes." Section 218.403(8), F.S., defines "surplus funds" as meaning "any funds in any general or special account or fund of a unit of local government, or funds held by an independent trustee on behalf of a unit of local government, which in reasonable contemplation will not be immediately needed for the purposes intended."

Concept Language

The concept language creates a new statutory maximum millage rate for local governments. A county, municipality, special district dependent to a county or municipality, municipal service taxing unit, independent special district, or school district may not levy a millage rate above its rolled-back rate, unless the government does not have any excess unencumbered fund balances as of the beginning of the fiscal year for which the millage rate is being considered or makes appropriations to reduce any such balances. This, in effect, prohibits property tax increases, as defined in current law, unless certain excess fund balances are spent down.

The concept language defines "excess unencumbered fund balances" as:

⁸ s. 200.065(5), F.S. The calculation of Florida per capita personal income is to be provided by the Office of Economic and Demographic Research, per s. 200.001(8)(i), F.S.

⁹ s. 200.065(5)(a), F.S.

[A]ny non-fee revenue, in any general or special account or fund of a county, municipality, special district dependent to a county or municipality, municipal service taxing unit, independent special district, or school district, or non-fee revenue held by an independent trustee on behalf of a county, municipality, special district dependent to a county or municipality, municipal service taxing unit, independent special district, or school district, which are not encumbered by appropriations or contractual obligations and are in excess of 10 percent of total annual revenues to the account or fund. The term does not include monies subject to restrictions imposed by the federal government or revenues that were approved by referendum of the electors in the affected jurisdiction.

The concept language defines “non-fee revenue” as:

[A]ny monies, except as otherwise provided in this section, which are derived from any taxes levied by a local government, revenue shared by another government with a local government, or revenues, the use of which may be for any public purpose, derived from other sources.

In order to eliminate excess unencumbered fund balances, the concept language allows these types of local governments to use such fund balances for any public purpose, except for funds subject to restrictions imposed by the federal government or revenues that were approved by referendum of the electors in the affected jurisdiction. This permission to expend funds applies irrespective of any other limitation on the use of such funds elsewhere in Florida law.

Local Option Tax Increases: *Property Tax Restraint*

Current Law

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law.¹⁰ Over the years, the legislature has, by general law, authorized many different local option taxes. Each local option tax source comes with its own set of rules or prescriptions relating to the method for adopting and levying the tax.

Concept Language

The concept language prohibits a municipality, county, or school district from enacting, extending or increasing any of the following local option taxes, if such local government had adopted a millage rate in excess of its rolled-back rate (with certain specified exceptions) in any of the three previous years:

- Local communications services tax¹¹
- Tourist development tax¹²;

¹⁰ Art VII, sec 9, Fla Const.

¹¹ Section 202.19, F.S.

- Tourist impact tax¹³;
- Discretionary surtax on documents;¹⁴
- Public service tax¹⁵;
- Local business tax¹⁶;
- Motor fuel and diesel taxes¹⁷;
- Convention development tax¹⁸;
- Local option food and beverage tax¹⁹;
- Local option sales taxes²⁰;

The restriction against levying millages in excess of the rolled-back rate do not apply to nonvoted required school operating millages identified in s. 200.001(3)(a), F.S., millages approved by a vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution, millages approved by a vote of the electors pursuant to s. 12, Art. VII of the State Constitution, or millages approved by the voters as authorized under s. 1011.71(9), F.S.

Voter Approved Taxes: *Elections*

Current Law

Currently, certain local option taxes and property taxes require voter approval prior to being levied. Others have voter approval as an option that the local government may use to approve the levy.

Tourist Development Taxes

Section 125.0104, F.S., authorizes five separate tourist development taxes that county governments may levy. Depending on a county's eligibility to levy, the tax rate applied to transient rental transactions may be as high as 6 percent. Of these five levies, the initial levy of tourist development tax by a county at a rate of one or two percent requires approval by referendum.²¹ Counties are authorized to levy an additional one percent tourist development tax, which may be approved by an extraordinary vote of the governing board of the county or by referendum.²²

Motor Fuel and Diesel Fuel Taxes

¹² Section 125.0104, F.S.

¹³ Section 125.0108, F.S.

¹⁴ Only Miami Dade County may levy this tax. See ss. 125.0167 and 201.031, F.S.

¹⁵ Sections 166.231-.235, F.S.

¹⁶ Chapter 205, F.S.

¹⁷ Section 336.021 and .025, F.S.

¹⁸ Section 212.0305, F.S.

¹⁹ Section 212.0306, F.S.

²⁰ Section 212.055, F.S.

²¹ Section 125.0104(3)(c), F.S.

²² Section 125.0104(3)(d), F.S.

County governments are authorized to levy up to 12 cents of local option fuel taxes in the form of three separate levies. The first is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county²³. Known as the ninth-cent fuel tax, this tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a countywide referendum, and the proceeds are used to fund specified transportation expenditures. The second is a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county²⁴. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a countywide referendum, and the proceeds are used to fund specified transportation expenditures. The third tax is a 1 to 5 cents levy upon every net gallon of motor fuel sold within a county, and diesel fuel is not subject to this tax²⁵. This additional tax may be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a countywide referendum, and the proceeds are used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

Discretionary Sales Surtaxes

By statute, counties have limited authority to levy certain discretionary sales surtaxes for specific purposes on transactions subject to state sales tax.²⁶ There are nine separate discretionary sales surtaxes. However, limitations exist regarding which counties may levy each surtax and which surtaxes may or may not be levied in combination.²⁷ Local discretionary sales surtaxes are generally approved by referendum.²⁸ The referendum must be approved by a majority of electors voting.²⁹ Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.³⁰

Discretionary sales surtaxes requiring voter approval are the:

- Charter county and regional transportation system surtax;³¹
- Local government infrastructure surtax;³²
- Small county surtax;³³

²³ Section 336.021(1)(a), F.S.

²⁴ Section 336.025(1)(a), F.S.

²⁵ Section 336.025(1)(b), F.S.

²⁶ Section 212.054, F.S.; s. 212.055, F.S.

²⁷ Section 212.055, F.S.

²⁸ Section 212.055, F.S., *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission, as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

²⁹ Section 212.055, F.S.

³⁰ *E.g.* s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); *but see* s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

³¹ Section 212.055(1), F.S.

³² Section 212.055(2), F.S.

³³ Section 212.055(3), F.S.

- Indigent care and trauma center surtax;³⁴
- School capital outlay surtax;³⁵
- Voter-approved indigent care surtax;³⁶
- Emergency fire rescue services and facilities surtax³⁷; and
- Pension liability surtax³⁸;

Ad Valorem Taxes (Property Taxes)

Most property tax levies under current law do not require voter approval, with the following exceptions:

- Operating purposes for up to 2 years, not subject to 10 mill cap;
- School additional operating millage (not to exceed four years)³⁹;
- Debt service, not subject to 10 mill cap⁴⁰;

Referendum Process

The Florida Election Code sets forth the general requirements for a referendum.⁴¹ The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a “yes” or “no” vote on the measure indicates approval or rejection, respectively.⁴² The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.⁴³ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.⁴⁴ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.⁴⁵

Five types of elections exist under the Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.⁴⁶ A “general election” is held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.⁴⁷

³⁴ Section 212.055(4)(b), F.S. Only the portion of the surtax for funding trauma services provided by a trauma center in counties with a population of less than 800,000 requires voter approval. Section 212.055(4)(a), F.S., also authorizes counties with a population of at least 800,000 to levy a surtax for providing medical care for indigent persons, but that can be approved by either a an extraordinary vote of the governing body *or* by referendum.

³⁵ Section 212.055(6), F.S.

³⁶ Section 212.055(7), F.S.

³⁷ Section 212.055(8), F.S.

³⁸ Section 212.055(9), F.S.

³⁹ Sections 1011.71(9) and 1011.73(2), F.S.

⁴⁰ Art VII, sec (9)(b), Fla Const.

⁴¹ Section 101.161, F.S.

⁴² Section 101.161(1), F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

⁴⁶ Section 97.021(11), F.S.

⁴⁷ Art. VI, sec 5(a), Fla. Const. (also codified as s. 97.021(15), F.S.)

Concept Language

The concept language would require any local option or property tax levy that will be approved by referendum be considered only at a general election. Further, the concept language would increase to sixty percent the threshold for approval of any local option tax or property tax levy voted on at the general election to sixty percent.

New Tax-Supported Debt Issuance: *Required Referenda*

Current Law

Local governments are authorized to issue debt supported by tax revenues. For example, s. 125.01(1)(r), F.S., provides:

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.

Section 166.111, F.S., provides:

The governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

The Florida Constitution authorizes counties, municipalities, school districts, special districts, and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness, or any form of tax anticipation certificates, that pledge ad valorem tax revenues and mature more than 12 months after issuance to finance or refinance capital projects authorized by law when approved by vote of the electors⁴⁸.

⁴⁸ Art VII, sec 12, Fla. Const.

However, not all forms of obligations for financing capital outlay entered into by local governments fall under this constitutional grant of authority. For example, school districts often use long-term lease finance arrangements generally referred to as “certificates of participation” as a financing mechanism for construction and improvements of school facilities. These arrangements have been found not to require voter approval,⁴⁹ because they are created where there is no express pledge of ad valorem tax revenues to support the debt, even though they may use tax revenues, including property taxes, as a revenue source for repayment. Essentially, if a bondholder has no right to compel the levy of ad valorem taxes by judicial action to meet the bond obligations, such an arrangement does not require voter approval under the state constitution.

Further, there is no general requirement that new local government tax-supported debt that pledges revenues beyond five years be approved by the voters.

Concept Language

The concept language would require voter approval for any new tax-supported debt that pledges revenues beyond five years. The voter approval would be subject to the same election restrictions described above for local option and property taxes. The concept language defines “debt” to mean:

[B]onds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.

The concept language defines “tax-supported debt” to mean:

[D]ebt secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, including but not limited to debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt that is secured solely by the revenues generated by the project that is financed with the debt.

Administrative and Conforming Change

The concept language creates a new Part IX of Chapter 218, F.S., titled the “Local Government Fiscal Responsibility Act.” The concept language creates s. 218.901, F.S., providing that the purpose of the Act is to:

Promote the fiscal responsibility of local governments in their use of public funds by providing additional conditions under which local governments may increase taxes, enact new taxes, extend expiring taxes, or issue new tax-supported debt.

⁴⁹ *State v. School Board of Sarasota County*, 561 So.2d 529 (Fla. 1990)

Fiscal Impacts

The changes suggested by the concept language could have a negative, but indeterminate, impact on local government revenues.

Effective Date

The effective date of the concept language is July 1, 2017.