

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

**BILL:** CS/CS/SJR 658

**INTRODUCER:** Judiciary Committee, Community Affairs Committee, and Senator Fasano

**SUBJECT:** Homestead/Nonhomestead Property

**DATE:** April 15, 2011

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Fav/CS</b>
2.	Munroe	Maclure	JU	<b>Fav/CS</b>
3.			BC	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This joint resolution proposes an amendment to Article VII, section 4, of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and to reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 5 percent. In addition, to these proposed and existing limitations on the assessed value, this joint resolution authorizes the Legislature, by general law, to prohibit increases in the assessed value of homestead property and certain nonhomestead property, with some exceptions.

This joint resolution creates an additional homestead exemption for specified homestead owners.

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments to Article VII sections 4 and 6, of the Florida Constitution prescribed herein shall take effect.

The joint resolution amends section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. These provisions limit annual assessment increases for specified nonhomestead real property.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

This joint resolution creates sections 32 and 33, Article XII, of the Florida Constitution.

This joint resolution proposes an amendment to sections 4 and 6, Article VII, and section 27, Article XII, of the Florida Constitution.

## **II. Present Situation:**

### **Property Valuation**

#### ***A.) Just Value***

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.<sup>1</sup>

#### ***B.) Assessed Value***

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.<sup>2</sup> Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>3</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.<sup>4</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.<sup>5</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 years of age or older.<sup>6</sup> The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.<sup>7</sup> Certain working waterfront property is assessed based upon the property's current use.<sup>8</sup>

#### ***C.) Additional Assessment Limitations***

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of

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<sup>1</sup> See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>2</sup> The constitutional provisions in article VII, section 4, of the Florida Constitution, were implemented in part II of ch. 193, F.S.

<sup>3</sup> FLA. CONST. art. VII, s. 4(a).

<sup>4</sup> FLA. CONST. art. VII, s. 4(c).

<sup>5</sup> FLA. CONST. art. VII, s. 4(e).

<sup>6</sup> FLA. CONST. art. VII, s. 4(f).

<sup>7</sup> FLA. CONST. art. VII, s. 4(i).

<sup>8</sup> FLA. CONST. art. VII, s. 4(j).

these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.<sup>9</sup>

Article XII, section 27, of the Florida Constitution, provides that the amendments in subsection (f), Article VII (authorizing counties to disregard assessment increases caused by living quarters occupied by parents or grandparents aged 62 or older) and subsection (g), Article VII (creating a limitation on annual assessment increases of specified nonhomestead residential property) are repealed effective January 1, 2019 and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

#### ***D.) Taxable Value***

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>10</sup>

#### **Homestead Exemption**

Article VII, section 6, of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.

#### **Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot (2009 SJR 532)**

In 2009, the Legislature passed SJR 532 which was to go before the voters as Amendment 3 on the November 2010 ballot. The proposed amendment 3 sought to reduce the annual assessment limitation from 10 to five percent annually and to provide an additional homestead exemption for “a person or persons” who have not owned a principal residence in the previous *eight* years that is equal to *25 percent* of the just value of the homestead in the first year for all levies, up to \$100,000. The amount of the additional homestead exemption decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years.<sup>11</sup>

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Art. XI, section 5(a), of the

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<sup>9</sup> FLA. CONST. art. VII, s. 4(g) and (h).

<sup>10</sup> FLA. CONST. art. VII, ss. 3 and 6.

<sup>11</sup> Fla. CS for SJR 532, 1<sup>st</sup> Eng. (2009) (Senator Lynn and others)

Florida Constitution.<sup>12</sup> The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment “shall be submitted to the electors at the next general election.” Specifically, the Court stated that:

Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.<sup>13</sup>

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’ ”<sup>14</sup>

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were “neither accurate nor informative” and “are confusing to the average voter.”<sup>15</sup> The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the “lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption.”<sup>16</sup>
- The terms “new homestead owners” in the title coupled with “first-time homestead” in the summary are ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.<sup>17</sup>
- The use of both the terms “principal residence” and “first-time homestead” in the ballot title and summary is misleading.<sup>18</sup>
- There is a material omission in the ballot title and summary, as they fail to “note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years.”<sup>19</sup>

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<sup>12</sup> *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).

<sup>13</sup> *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).

<sup>14</sup> *Id.* at 659, citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

<sup>15</sup> *Id.* at 657 and 660.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Roberts*, at 657 and 660.

<sup>19</sup> *Id.* at 657 and 661.

### **“Save Our Homes” Assessment Limitation**

The “Save Our Homes” provision in article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead’s assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).<sup>20</sup> The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Art. II of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of:
  - Three percent of the prior year’s assessment, or
  - The percent change in the Consumer Price Index (CPI) for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued “Save Our Homes” benefit. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the “Save Our Homes” accrued benefit to the new homestead.

### **Section 193.155, Florida Statutes**

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the “Save Our Homes” amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.<sup>21</sup> Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the “Save Our Homes” provision in Article VII, section 4(d), of the Florida Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from the prior year; or
- The percentage change in the CPI for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.<sup>22</sup>

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

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<sup>20</sup> FLA. CONST. art. VII, s. 4(d).

<sup>21</sup> See *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (stating that “the clear language of the amendment establishes January 1, 1994, as the first “just value” assessment date, and as a result, requires the operative date of the amendment’s limitations, which establish the “tax value” of homestead property, to be January 1, 1995”).

<sup>22</sup> Section 193.155(1), F.S.

### **Rule 12D-8.0062, Florida Administrative Code (F.A.C.): “The Recapture Rule”**

In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C., of the Department of Revenue, entitled “Assessments; Homestead; and Limitations.”<sup>23</sup> The administrative intent of this rule is to govern “the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, section 4(c), of the Florida Constitution, and s. 193.155, F.S.”<sup>24</sup>

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the “recapture rule.” This provision requires property appraisers to increase the prior year’s assessed value of a homestead property by the lower of three percent or the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the “recapture provision” states:

(5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year’s assessed value ....<sup>25</sup>

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the “Save Our Homes” cap whose property is assessed at less than just value may see an increase in the assessed value of their home during years where the just/market value of their property decreased.<sup>26</sup>

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year’s assessed value decreased by that percentage.

### **Markham v. Department of Revenue**<sup>27</sup>

On March 17, 1995, William Markham, a Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue’s proposed “recapture rule” within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was “an invalid exercise of delegated legislative authority and is arbitrary and capricious.”<sup>28</sup> Markham also claimed that subsection (5) of the rule was at variance with the constitution – specifically that it conflicted with the “intent” of the ballot initiative and that a third limitation relating to market value or

<sup>23</sup>While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

<sup>24</sup> Rule 12D-8.0062(1), F.A.C.

<sup>25</sup> Rule 12D-8.0062(5), F.A.C. (emphasis added).

<sup>26</sup> *Markham v. Dep’t of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that “subsection (5) requires an increase to the prior year’s assessed value in a year where the CPI is greater than zero”).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

movement<sup>29</sup> should be incorporated into the language of the rule to make it compatible with the language in Article VII, section 4(c), of the Florida Constitution.

A final order was issued by The Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with Article VII, section 4(c), of the Florida Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.<sup>30</sup>

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.<sup>31</sup>

### III. Effect of Proposed Changes:

This joint resolution proposes an amendment to Article VII, section 4, of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and to reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 5 percent. In addition, to these proposed and existing limitations in section 4, Article VII, of the Florida Constitution, this joint resolution authorizes the Legislature, by general law, to prohibit increases in the assessed value of homestead property and certain nonhomestead property, with some exceptions. This authority to limit increases in the assessed value of homestead and certain nonhomestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

This joint resolution amends Article VII, section 6, of the Florida Constitution, to create an additional homestead exemption for specified homestead owners.

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments to Article VII, sections 4 and 6, of the Florida Constitution prescribed herein shall take effect.

The joint resolution amends section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. Subsections (f) and (g) of Section 4, Article VII, Florida Constitution limit annual assessment increases for specified nonhomestead real property.

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<sup>29</sup> *Id.* at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").

<sup>30</sup> *Id.* at ¶ 20.

<sup>31</sup> *Id.* at ¶ 22.

**Assessment Limitation on Homestead Property (*Recapture Rule*)**

The joint resolution proposes an amendment paragraph 1 of subsection (d) in s. 4, Article VII, of the Florida Constitution, to authorize the Legislature to provide, by general law, that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1. This authority to limit increases in the assessed value of homestead and certain nonhomestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

The joint resolution also deletes obsolete language provided in paragraph 8 of subsection (d) in s. 4, Article VII, of the Florida Constitution.

The joint resolution creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters with the 2012 presidential preference primary, the amendment shall take effect upon approval by the electors and operate retroactively to January 1, 2012, or if approved by the voters at the 2012 general election, this amendment will take effect on January 1, 2013.

**Assessment Limitation on Nonhomestead Property**

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Article VII, to reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 5 percent.

The joint resolution specifies that the Legislature may provide by general law that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding date of assessment provided by law.

The joint resolution also creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters with the 2012 presidential preference primary, the amendment shall take effect upon approval by the electors and operate retroactively to January 1, 2012, or if approved by the voters at the 2012 general election, this amendment will take effect on January 1, 2013.

**Additional Homestead Exemption for Specified Homestead Owners**

The joint resolution proposes to create subsection (f) in s. 6, Article VII, of the Florida Constitution. This amendment allows individuals who are entitled to a homestead exemption under s. 6(a), Article VII, of the Florida Constitution, and who have not previously received a homestead exemption in the past three years, to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property up to \$200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies. The additional exemption shall apply to property purchased on or after January 1, 2011, if this amendment is approved by the voters at the special

election held on the date of the 2012 presidential preference primary, or on or after January 1, 2012, if approved at the 2012 general election.

The joint resolution also creates section 33, Article XII, of the Florida Constitution, to provide that if approved by Florida voters at a special election authorized by law to be held on the date of the 2012 presidential preference primary, this amendment shall operate retrospectively to January 1, 2012, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2011. If approved by Florida voters at the 2012 general election, this amendment shall take effect January 1, 2013, and the additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

### **Amendment to Section 27 of Article XII of the Florida Constitution**

The joint resolution amends section 27, Article XII of the Florida Constitution to delete language that would repeal subsections (f) and (g) of Section 4 of Article VII, effective January 1, 2019. Subsections (f) and (g) of Section 4 of Article VII, of the Florida Constitution limit annual assessment increases for specified nonhomestead real property. Subsections (f) and (g) of Section 4, Article VII, Florida Constitution state:

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

An effective date for the proposed amendment to section 27, Article XII, of Florida Constitution, is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.<sup>32</sup>

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

#### **Constitutional Amendments**

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote 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 the Secretary of State, or at a special election held for that purpose.

Section 5(d), Article XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

Section 5(e), Article XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Section 5(a), Article XI, of the Florida Constitution, and s. 106.161(1), F.S., require constitutional amendments submitted to the vote of the people to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary

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<sup>32</sup> FLA. CONST. art. XI, s. 5(e).

are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>33</sup>

### **Equal Protection Clause**

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”<sup>34</sup> In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.<sup>35</sup> In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.<sup>36</sup> Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.<sup>37</sup>

It has been argued that the recapture rule provided in ss. (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.<sup>38</sup> To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

If approved by the voters, this joint resolution will provide ad valorem tax relief to homestead and specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the three percent assessment limitation. This joint resolution will also have an effect on local government revenue.<sup>39</sup>

<sup>33</sup> *Roberts*, 43 So. 3d at 659, citing *Florida Dep’t of State v. Slough*, 992 So.2d 142, 147 (Fla. 2008).

<sup>34</sup> U.S. CONST. amend. XIV, § 1. See also FLA. CONST. art. I, s. 2.

<sup>35</sup> *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). See also *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident’s rights under the Equal Protection Clause). See also *Nordlinger v. Hahn*, 505 U.S. 1 (1992) (stating that the constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2 percent per year, was not a violation of the Equal Protection Clause).

<sup>36</sup> *Nordlinger*, 505 U.S. at 33-34, stating that a “classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose”).

<sup>37</sup> *Id.*

<sup>38</sup> Walter Hellerstein et al., Shackelford Professor of Taxation, LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA’S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

<sup>39</sup> Completed with assistance from the Staff of the Senate Budget Subcommittee on Finance and Tax.

**B. Private Sector Impact:**

**Assessment Limitation on Homestead Property (*Recapture Rule*)**

If approved by the voters, taxes will be reduced for those taxpayers whose homesteads are depreciating but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a “Save Our Homes” differential; however, nonhomestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

**Assessment Limitation on Nonhomestead Property**

Owners of existing residential rental and commercial real property may experience property tax savings. To the extent that local taxing authorities’ budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

**Additional Homestead Exemption for Specified Homestead Owners**

If approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on these specified homesteads will increase each year. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

**C. Government Sector Impact:**

Local governments may experience a reduction in the ad valorem tax base if this joint resolution is approved by voters. Since this amendment would require voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 658.

**Additional Homestead Exemption for Specified Homestead Owners**

Should this amendment be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows:<sup>40</sup>

2012 Effective Date		
FY 2012-13	FY 2013-14	Recurring Impact
-\$55 million	-\$110 million	-\$221 million
2013 Effective Date		

<sup>40</sup> Revenue Estimating Conference, *First-Time Homesteaders SJR 658 & HJR 381* (Mar. 23, 2011) (assuming that 36 percent of homesteaders will be first-time homesteaders, to account for the definition of first-time homebuyers).

FY 2013-14	FY 2014-15	Recurring Impact
-\$65.6 million	-\$129.1 million	-\$192.7 million

**Assessment Limitation on Homestead and Specified Nonhomestead Property (Recapture Rule)**

The Revenue Estimating Conference has not reviewed the recapture provisions of SJR 658, however when addressing similar legislation on the recapture amendment (2011 SJR 210), the Revenue Estimating Conference determined that the fiscal impact on school taxes, should the joint resolution be approved by the voters, would be as follows for :

2012 Effective Date		
FY 2012-13	FY 2013-14	Recurring Impact
-\$10 million	-\$16.3 million	-\$27.9 million
2013 Effective Date		
FY 2013-14	FY 2014-15	Recurring Impact
-\$6.2 million	-\$12.3 million	-\$17.7 million

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The fiscal impact on non-school taxes would be as follows:

2012 Effective Date		
FY 2012-13	FY 2013-14	Recurring Impact
-\$16.9 million	-\$28.2 million	-\$52.8 million
2013 Effective Date		
FY 2013-14	FY 2014-15	Recurring Impact
-\$10.3 million	-\$21.0 million	-\$32.5 million

42

**Assessment Limitation on Nonhomestead Property**

The Revenue Estimating Conference has not determined the fiscal impact on the constitutional amendment within CS/CS/SJR 658 that reduced from 10 to 5 percent, the limitation on limitation on annual assessment increases applicable to nonhomestead property. The Revenue Estimating Conference has determined that the fiscal impact on the constitutional amendment within SJR 658 that reduces from 10 percent to three percent, the limitation on annual assessment increases applicable to nonhomestead property would be as follows (only non-school taxes are affected):

2012 Effective Date		
FY 2012-13	FY 2013-14	FY 2014-15
-\$121.6 million	-\$326.1 million	-\$619.6 million

<sup>41</sup> Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (March 30, 2011).

<sup>42</sup> Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (March 30, 2011).

2013 Effective Date		
FY 2013-14	FY 2014-15	FY 2015-16
-\$225 million	-\$526.1 million	-\$903.9 million

Note: The committee substitute reduces from 10 percent to five percent, the limitation on annual assessment increases applicable to nonhomestead property.

**Publication Requirements**

Section 5(d), Article XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.<sup>43</sup> The division has not estimated the full publication costs to advertise this constitutional amendment at this time.

**VI. Technical Deficiencies:**

Lines 352-353 of the committee substitute, creating section 32, should refer to the amendment of “...Section 4 of Article VII protecting homestead [*and specified nonhomestead*] property having a declining just value...” The language referring to *specified nonhomestead* appears to have been inadvertently omitted.

**VII. Related Issues:**

None.

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<sup>43</sup> Florida Department of State, *Senate Joint Resolution 390 Fiscal Analysis* (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on April 12, 2011:**

The committee substitute proposes an amendment to Article VII, section 4, of the Florida Constitution, to allow the Legislature to prohibit increases in the assessed value of a homestead property and certain nonhomestead property, in any year where the market value of the property decreases.

The committee substitute proposes an amendment to paragraph 1 of subsection (g) and (h) in s. 4, Article VII, of the Florida Constitution to reduce the annual assessment limitation on certain nonhomestead property from 10 to 5 percent.

The committee substitute makes technical corrections and provides conditional effective dates for the proposed amendments to the Florida Constitution depending on when the proposed amendments are submitted to Florida voters for their approval or rejection.

The committee substitute proposes the removal of language in s. 27, Article XII, of the Florida Constitution, that would have repealed subsections (f) and (g) of s. 4, Article VII of the Florida Constitution, which would limit the annual assessment increases for specified nonhomestead real property.

The committee substitute revises the ballot summary to conform to changes made in the committee substitute proposing amendments to the Florida Constitution.

**CS by Community Affairs on March 14, 2011:**

This committee substitute makes technical and clarifying amendments as recommended by the Department of Revenue.<sup>44</sup> Specifically the committee substitute:

- Changes references to “fair market” and “market” value to “just” value to make it consistent with provisions in the Florida Constitution and Florida Statutes.
- Changes the terms “an increase” to “a change” on line 49 of the joint resolution.
- Provides that the joint resolution has no effect on the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>44</sup> See Florida Department of Revenue, *SJR 658 Fiscal Analysis*, at 3 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).