

**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 Community Affairs Committee

BILL:               SJR 314

INTRODUCER:    Senator Simmons

SUBJECT:         Ad Valorem Taxation

DATE:            October 24, 2011       REVISED:       \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This joint resolution proposes amendments to Article VII, section 4, of the Florida Constitution to permit the Legislature to prohibit increases in the assessed value of homestead and certain non-homestead property if the just value of the property decreases. The joint resolution also reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 7 percent. An amendment to Article VII, section 6, of the Florida Constitution is also proposed to create an additional homestead exemption. The Legislature is authorized to adjust the amount of the exemption.

This joint resolution removes the current automatic repeal of subsections (f) and (g) of section 4, Article VII, of the Florida Constitution<sup>1</sup>, relating to assessments of certain non-homestead residential property by amending Article XII, section 27, of the Florida Constitution. This section is further amended to provide when the amendments to Article VII sections 4 and 6, of the Florida Constitution shall take effect.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage. Should this joint resolution be adopted, an additional joint resolution will be required to rescind and withdraw HJR 381 (2011) which is to go before the voters as Amendment 4 on the November 2012 ballot.

<sup>1</sup> Subsections (f) and (g) of Article VII, section 4, of the Florida Constitution have been renumbered since this repeal was inserted. The provisions referenced are currently in the Constitution as subsections (g) and (h), Article VII, section 4. For ease of reference, these provisions will be referred to as referenced in the repeal, subsections (f) and (g).

## II. Present Situation:

### Property Valuation in Florida

#### 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>2</sup>

#### Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- 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>

#### 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>9</sup>

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<sup>2</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>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).

<sup>9</sup> Fla. Const. art. VII, ss. 3 and 6.

## Tax Exemptions and Assessment Limitations

### 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 thereon 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.

### Other Specific Exemptions

Article VII, section 3, of the Florida Constitution, provides for other specific exemptions from property taxes.

- Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law.<sup>10</sup>
- Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons, and persons who are totally and permanently disabled.<sup>11</sup>
- A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.<sup>12</sup>
- A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.<sup>13</sup>
- Tangible personal property is exempt up to \$25,000 of its assessed value.<sup>14</sup>
- There is an exemption for real property dedicated in perpetuity for conservation purposes.<sup>15</sup>
- In November 2010, voters approved a constitutional amendment that adds an additional exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.<sup>16</sup>

### Homestead Assessment Limitation: Save Our Homes

The *Save Our Homes* assessment limitation was amended into the Florida Constitution in 1992. 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 percentage increase in the Consumer Price Index (CPI).<sup>17</sup> In addition, 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.

<sup>10</sup> Fla. Const. art. VII, s. 3(a).

<sup>11</sup> Fla. Const. art. VII, s. 3(b).

<sup>12</sup> Fla. Const. art. VII, s. 3(c).

<sup>13</sup> Fla. Const. art. VII, s. 3(d).

<sup>14</sup> Fla. Const. art. VII, s. 3(e).

<sup>15</sup> Fla. Const. art. VII s. 3(f).

<sup>16</sup> Fla. Const. art. VII s. 3(g).

<sup>17</sup> Fla. Const. art. VII, s. 4(d).

**Nonhomestead Assessment Limitations**

Article VII, sections 4(g) and (h), of the Florida Constitution,<sup>18</sup> were created in January 2008, when Florida electors voted to provide an assessment limitation for nonhomestead 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 these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, nonhomestead 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>19</sup>

Article XII, section 27, of the Florida Constitution, provides that the subsections (f), and (g), Article VII (creating limitations on annual assessment increases of specified nonhomestead 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.

**Rule 12D-8.0062, Florida Administrative Code (F.A.C.): 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>20</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>21</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 assessed value of a homestead property by the lower of three percent or the percent increase in the CPI on all property where the value is lower than the just value.

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 when the just market value of their property decreased.<sup>22</sup>

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<sup>18</sup> See note 1, *infra*.

<sup>19</sup> Fla. Const. art. VII, s. 4(g) and (h).

<sup>20</sup> While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.027, 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>21</sup> Rule 12D-8.0062(1), F.A.C.

<sup>22</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”).

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>23</sup>

On March 17, 1995, William Markham, the 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>24</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 movement<sup>25</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>26</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>27</sup>

### **Amendment 3 Proposed for the November 2010, Ballot: SJR 532 (2009)**

In 2009, the Legislature passed SJR 532 which was to go before the voters as Amendment 3 on the November 2010 ballot. Among the provisions of Amendment 3:

- Reduce the annual nonhomestead assessment limitation from 10 percent to 5 percent.
- Provide an additional homestead exemption for persons who have not owned a principal residence in the previous eight years.<sup>28</sup>
  - The additional homestead exemption would have been 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 was to decrease by 20 percent of the initial exemption during each of the succeeding five years, until it was no longer available in the sixth and subsequent years.<sup>29</sup>

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</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>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 22.

<sup>28</sup> This was popularly referred to as a first-time homebuyer exemption.

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 Article XI, section 5(a), of the Florida Constitution.<sup>30</sup>

#### **Amendment 4 Proposed for the November 2012 Ballot: HJR 381 (2011)**

In 2011, the Legislature approved HJR 381 which is to go before the voters as Amendment 4 on the November 2012 ballot. HJR 381 (2011) proposes amendments to Article VII, sections 4 and 6 and Article XII, section 27 of the Florida Constitution. It also proposes the creation of Article XII, sections 32 and 33 of the Florida Constitution. The ad valorem taxation provisions of HJR 381 (2011) comprise the following:

- Reducing the annual assessment limitation for specified nonhomestead property from 10 percent to 5 percent.
- Allowing the Legislature, by general law, 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.
- Providing an additional homestead exemption for persons who are entitled to a homestead exemption under s. 6(a), Art. VII, State Constitution, and have not received a homestead exemption in the previous three years.
  - The additional homestead exemption would be equal to 50 percent of the just value of the homestead property though the exemption may not exceed the median just value of all homestead property within the county.
  - The amount of the additional homestead exemption is reduced each year for five years by 20 percent of the initial exemption or by an amount equal to the difference between the just value and the assessed value, whichever is greater. The exemption is not available in the sixth and subsequent years after it is first received.
  - The exemption applies only to non-school property taxes.
- Delaying the currently scheduled repeal of constitutional amendments which limit annual assessments for specified nonhomestead property from 2019 to 2023.

If approved by voters at the 2012 general election, the assessment limitations and additional homestead exemption shall take effect January 1, 2013. The additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

### **III. Effect of Proposed Changes:**

#### **Assessment Limitation on Homestead and certain Nonhomestead Property: Recapture**

The joint resolution proposes to amend paragraph 1 of subsections (d), (g) and (h) in section 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

<sup>29</sup> Fla. CS for SJR 532, 1<sup>st</sup> Eng. (2009) (Senator Lynn and others).

<sup>30</sup> *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).

the property on the preceding January 1. This authority to limit increases in the assessed value of homestead and certain non-homestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided by subsection (d)(5) in section 4, Article VII, of the Florida Constitution.

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

### **Assessment Limitation on Specified Nonhomestead Property**

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in section 4, Article VII, to reduce the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 7 percent.

### **Additional Homestead Exemption**

The joint resolution proposes to create subsection (f) in section 6, Article VII, of the Florida Constitution. This amendment allows individuals who establish a right to receive a homestead exemption under Article VII, section 6(a), of the Florida Constitution, to receive an additional homestead exemption. This exemption is equal to 30 percent of the homestead property's just value in excess of \$75,000 but less than or equal to \$200,000, plus 15 percent of the homestead property's just value in excess of \$200,000 but less than or equal to \$400,000. The value of the additional homestead exemption shall be reduced by the difference between the just value of the property and the assessed value of the property determined under subsection (d) in section 4, Article VII of the Florida Constitution.

By general law, the legislature may adjust the percent of just value or the maximum and minimum levels of just value used to calculate the additional homestead exemption, but may not reduce the value of the additional exemption below the value established in this subsection. The exemption does not apply to school levies.

### **Scheduled Repeal of Assessment Limitation on Specified Nonhomestead Property**

The joint resolution amends Article XII, section 27 of the Florida Constitution, to delay until January 1, 2023, the repeal, currently scheduled to take effect January 1, 2019, of subsections (f) and (g) of section 4, of Article VII of the Florida Constitution. These subsections limit annual increases for specified nonhomestead real property. The joint resolution delays until 2022 the submission of an amendment proposing the abrogation of such repeal to the voters.

Article XII, section 27, of the Florida Constitution, is further amended to establish a schedule for authorizing the proposed property assessment and additional homestead exemption amendments of the joint resolution. If submitted to the electors at a special election held on the date of the 2012 presidential preference primary, the amendments shall take effect upon approval and shall operate retroactively to January 1, 2012. If submitted to the electors at the 2012 general election, the amendments, upon approval, shall take effect January 1, 2013.

**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**

Article XI, section 1, 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.

Article XI, section 5(d), 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.

Article XI, section 5(e), 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.

Article XI, section 5(a), of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to 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, 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>31</sup>

<sup>31</sup> *Roberts*, 43 So. 3d at 659, citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

### **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>32</sup> In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.<sup>33</sup> In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.<sup>34</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>35</sup>

It has been argued that the recapture rule provided in section (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.<sup>36</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 non-homestead owners. Owners of specified residential rental and commercial real property may experience a reduction in tax assessments due to the seven percent assessment limitation.

### **B. Private Sector Impact:**

#### **Assessment Limitation on Homestead Property: Recapture**

If approved by the voters and implemented by the Legislature, taxes will be reduced for those taxpayers whose homesteads or specified nonhomesteads are depreciating but are still assessed at less than just value. The joint resolution will redistribute the tax burden. Non-homestead 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.

<sup>32</sup> U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

<sup>33</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>34</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>35</sup> *Id.*

<sup>36</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).

**Assessment Limitation on Non-homestead 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**

If approved by the voters, homestead owners whose just values are greater than \$75,000 may experience reductions in ad valorem taxes. 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:**

The Revenue Estimating Conference (REC) has not yet determined the fiscal impact of SJR 314 though it is scheduled to do so. The REC is planning to revisit and update the fiscal impact of HJR 381 (2011) as well. The REC has previously adopted an indeterminate negative estimate for the various provisions of HJR 381 (2011).<sup>37</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**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>37</sup> Revenue Estimating Conference, *Implementing Bill for Constitutional Amendment – 10 to 5 Assessment Limitation for Certain Non-homestead Property, First Time Homesteader Additional Homestead Exemption* (May 18, 2011) & *Recapture, Homestead and Non-homestead* (Jun. 28, 2011). The table reflects total recapture.