

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Community Affairs Committee

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BILL: SJR 598

INTRODUCER: Senator Geller

SUBJECT: Ad Valorem Taxes and Eminent Domain

DATE: March 31, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	GE	_____
3.	_____	_____	WM	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This joint resolution proposes to amend section 4, Art. VII of the Florida Constitution, to provide for assessing a property that is purchased as a replacement for a homestead property acquired through eminent domain at less than just value. Basically, this would allow for “portability” of the “Save Our Homes” assessment limitation to a replacement property for a property owner that is forced to sell a homestead property through eminent domain.

The assessment limitation in this joint resolution is applicable if the assessed value of the replacement property equals or exceeds the assessed value of the previous homestead. Also, the limitation only applies to the first replacement property on which a homestead exemption is claimed after the eminent domain action. The property owner must claim homestead exemption on the replacement property no later than the second January 1 following the eminent domain action. The replacement property does not have to be located in the same county where the eminent domain action occurred and may be acquired before or after the taking.

This joint resolution, upon approval of the electorate, creates subsection 4(f) of Article VII of the Florida Constitution.

## II. Present Situation:

### *Property Taxation in Florida*

Ad valorem tax or “property tax” continues to be a major source of revenue for local governments in Florida. In FY 2002-03 (the last year for which fiscal information is available)

property taxes constituted 30 percent of county governmental revenue (\$5.7 billion ),<sup>1</sup> and 24 percent of municipal governmental revenue (\$2.1 billion), making it by far the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for School Districts. In FY 2000-01, school districts levied \$7.6 billion in property taxes for K-12 education.<sup>2</sup>

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.<sup>3</sup> However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.<sup>4</sup> In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions,<sup>7</sup> which includes homestead exemptions.<sup>8</sup>

<sup>1</sup> Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at <http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls>.

<sup>2</sup> See 2004 FLORIDA TAX HANDBOOK, p. 137. The state and federal governments contributed approximately \$9 billion in the same year.

<sup>3</sup> See Art. VII, s. 1, Fla. Const.

<sup>4</sup> See Art. VII, s. 9 of the Florida Constitution. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of table value.

<sup>5</sup> Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

<sup>6</sup> Article VII, s. 4(c) of the Florida Constitution, authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to 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. This provision is known as the "Granny Flats" assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devices (s. 193.621, F.S.) and building renovations for the physically handicapped (s. 193.623, F.S.).

<sup>7</sup> Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;
- Portions of property use predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
- Household goods and personal effects, not less than one thousand dollars;
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
- Property used for community and economic development, by local option and as defined by general law;
- Certain renewable energy source devices and real property on which the device is installed and operated; and
- Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>8</sup> Article VII, s. 6(a-d) of the Florida Constitution, provides for a \$25,000 homestead exemption. Article VII, s. 6(e) of the Florida Constitution, authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.<sup>9</sup> The courts have further ruled that this immunity extends to property of school districts<sup>10</sup> and certain special districts.<sup>11</sup>

In tax year 2002, the combination of these forms of property tax relief effectively reduced the taxable value of property in this state by 28 percent.<sup>12</sup> For FY 2003-04, it is estimated that the tax revenue loss due to these forms of property tax relief will be \$686 million for valuation differentials, \$2.09 billion for the “Save Our Homes” assessment limitation, and \$10.5 billion for all exemptions.<sup>13</sup>

Any additional reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.<sup>14</sup>

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

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value.<sup>15</sup> However, section 4 also provides exceptions to this requirement, in the form of valuation differentials and assessment limitations.

The most significant of which is the “Save Our Homes” assessment limitation. The annual increase in homestead property values is limited to 3 percent or the Consumer Price Index percentage, whichever is lower, not to exceed just value. If there is a change in ownership, the property is to be assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law. Section 193.155, F.S., implements this assessment limitation.

#### **Eminent Domain**

The Florida Legislature is vested with the power of eminent domain and constitutional

valorem tax levies. This \$25,000 exemption is implemented in ss. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities. Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed \$20,000, adjusted for inflation.

<sup>9</sup> See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm’n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>10</sup> *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975).

<sup>11</sup> *Sarasota-Manatee Airport Auth. v. Mikos*, 605 So. 2d 132 (Fla. 2d DCA 1992). Cf. *Canaveral Port Auth. V. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

<sup>12</sup> Out of \$1,236 billion in just (or market) value, \$347 billion was not taxed. See LCIR database at <http://fcn.state.fl.us/lcir/dataAto?Z.html>.

<sup>13</sup> 2003 Florida Tax Handbook, p. 139-40.

<sup>14</sup> Generally, local governments respond to this resulting reduction in the tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

<sup>15</sup> *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

limitations on that power. Article X, s. 6 of the Florida Constitution, provides:

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

The Legislature can delegate that authority to agencies of government through legislative enactments.<sup>16</sup> Generally, it is the right of the president and directors of any corporation organized for the purpose of constructing, maintaining or operating public works to exercise eminent domain of any lands, public or private, necessary to the business contemplated in the charter, and to appropriate the same or take from any land most convenient to their work certain material which may be necessary for the construction and the keeping in repair of its works and improvements, upon making due compensation according to law to private owners.<sup>17</sup>

### **Statutory Eminent Domain Procedures**

The statutory eminent domain procedures in chapter 73, F.S., include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, severance and business damages, and costs and attorneys' fees related to the proceeding. Procedures under eminent domain require a trial by a jury of 12 in the local venue. Eminent domain procedures take precedence over all other civil matters.<sup>18</sup> Supplementary procedures for eminent domain actions in chapter 74, F.S., are commonly referred to as "quick-take" provisions. Under the quick-take provisions, certain entities, including municipalities and public utilities, may take possession and title to land subject to an eminent domain proceeding in advance of the entry of final judgment. Eminent domain procedures, especially quick-take, offer certain advantages. For the property owner, the only issue in dispute is the amount of compensation for the property taken. Under quick-take, an entity is required to provide appraisals of the property and deposit (with the court) twice the estimated value of the property until a financial determination is made.

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

This joint resolution would amend section 4, Art. VII of the Florida Constitution, to provide for a limitation on the assessed value of a property purchased as a replacement property following an eminent domain action. The joint resolution provides that the amendment shall be submitted to

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<sup>16</sup> See *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (Fla. 1926).

<sup>17</sup> See s. 361.01, F.S.

<sup>18</sup> By comparison, in federal court, criminal and civil are not separated and criminal cases are scheduled based upon the right to a speedy trial, all others are heard as court time allows. Federal eminent domain cases are not required to have a jury and the venue is at the site assigned by the court. If a natural gas transmission pipeline project involves interstate transmission, then the company and project are federally regulated and have to acquire property pursuant to federal eminent domain laws. Federal law protects pipelines from service disruption should a state road or other state project require a line to be moved. Conflicts can arise, however, when a natural gas transmission pipeline has a permit to be within a state (or local government) right-of-way since the agency only needs to give 30 days notice to move the pipeline because of some road project. If the natural gas transmission pipeline company cannot secure the necessary right of way, the road project can be held up.

the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law.

This limitation on assessed value is applicable if a homestead property is taken through an eminent domain action and the value of the designated replacement property exceeds the homestead exemption. The difference between the new homestead property's just value and its assessed value in the first year the homestead is established may not exceed the difference between the previous homestead's just value and its assessed value in the year of sale. In addition, the assessed value of the new homestead must equal or exceed the assessed value of the previous homestead.

The calculation above applies only to the first replacement property on which homestead exemption is claimed. The homestead exemption for the replacement property must be claimed not later than the second January 1 following the eminent domain action. This provision applies regardless of whether the replacement property is located in the same county. The replacement property may be acquired by the taxpayer before or after the eminent domain action.

Finally, the joint resolution provides ballot language.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, Section 1 of the State Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths 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 Secretary of State's office or may be placed at a special election held for that purpose.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The fiscal impact of this joint resolution is indeterminate because the number of properties acquired each year by eminent domain in Florida is not available.

**B. Private Sector Impact:**

If approved by the electorate, this provision would allow homestead owners to transfer the benefit accrued under the “Save Our Homes” assessment limitation for a property that is the subject of an eminent domain action to a replacement homestead property, with certain limitations.

**C. Government Sector Impact:**

The Division of Elections estimates that the cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 2006 general election is approximately \$60,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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