

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes.

The HJR :

- increases the homestead exemption;
- establishes a property tax exemption for tangible personal property of up to \$25,000 in value;
- reduces the taxable value of affordable housing and working waterfront property by allowing assessments based on classified use; and
- increases the exemption for low-income seniors to \$100,000, reducing taxable values.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Ad valorem taxation in Florida

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 Local governments may levy ad valorem taxes subject to the following limitations:

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 fixed by law for a county furnishing municipal services, and

Millage authorized by law approved by voters for special districts.²

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

The property tax is the largest single tax revenue source for government in Florida, with \$30.5 billion levied in FY 2006-07.⁴ Property taxes levied in Florida have grown rapidly in recent years from \$15.3 billion in FY 2000-01, an increase of 99%. For the same period, Florida personal income has increased 44% and growth measured by population and inflation has increased 31%.

Unlike most other taxes in the state, ad valorem taxes do not have a fixed tax rate from year to year. Instead, the tax rate is determined by the taxing authority each year. Chapter 200, F.S., provides the process by which local governments determine the ad valorem tax rates for each year. Section 193.023, F.S., requires property appraisers to complete their assessment of all property by July 1 of each year. During the same period, local taxing authorities are preparing their budgets for the upcoming fiscal year, which begins October 1.

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%.

³ Art. VII, sec 9(b), Fla. Const.

⁴ Property Tax Reform Committee: Preliminary Report and Recommendations. Presentation to the House Committee on State Affairs, January 24, 2007.

The rolled-back rate is the millage that would provide the same amount of tax revenue for the taxing authority as it received in the prior fiscal year. The rolled-back rate is calculated by dividing the prior year's revenues by the current year tax base, after new construction, major improvements, and additions due to boundary changes are removed from the base. Levying the rolled-back rate typically will provide a taxing authority with greater revenues than the prior year, despite the lower millage rate, due to the addition of new construction and annexed property.

Under current law, a taxing authority levying a tax rate in excess of the rolled-back rate must publish a NOTICE OF PROPOSED TAX INCREASE in a local newspaper. Likewise, the Notice of Proposed Property Taxes (TRIM notice) received by each taxpayer shows the difference between the taxes that would be due under the rolled-back rate and the taxes that will be due under the taxing authority's proposed tax rate. Because property values in most jurisdictions increase each year, multiplying the increased value by the millage rate from the prior year can result in large property tax revenue increases, even though the tax rate remains the same. With the historically large increases in value of Florida real property since 2000, property tax receipts have grown at historically high rates while millage rates have remained the same or been reduced.

Current property tax issues

A 1934 amendment to the Florida Constitution of 1885 initiated the Homestead Exemption. Beginning in 1935, an exemption of \$5,000 was made available to every person having title to Florida real estate and maintaining a permanent residence thereon. The Constitution of 1968 preserved the Homestead Exemption. Since 1982, the homestead exemption amount has been \$25,000 for all property tax levies.⁵ In 2006 there were 4,368,937 homesteads in Florida, and the homestead exemption reduced the 2006 tax roll by \$108.9 billion.

The Save Our Homes assessment growth limitation was added to the Constitution in 1992, although its limitations first became effective with the 1995 tax roll. This limitation provides that growth in the assessed value of each homestead parcel may not exceed the lesser of 3% of the percentage change in the Consumer Price Index. In *Smith v. Welton*,⁶ the First District Court of Appeal stated:

The purpose of the amendment is to encourage the preservation of homestead property in the face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption, exemption from forced sale, and the inheritance and alienation of homestead.

Save Our Homes has suppressed the taxable value of homestead properties in Florida. In doing so, the share of ad valorem taxes paid by owners of non-homestead properties has increased relative to homestead property owners. In 2006, Save Our Homes reduced statewide taxable value by 4405 billion, representing approximately 25% of total taxable value for all real property. Homesteads currently account for 32.1% of taxable value. In the absence of Save Our Homes, homesteads would account for 45.5%.⁷

Studies by the Department of Revenue, Office of Economic and Demographic Research, and the Property Tax Reform Committee demonstrate that businesses are bearing a larger share of the ad valorem tax burden than they would in the absence of Save Our Homes. Residential property without homestead protection also bears a larger share of taxes than they would in the absence of Save Our Homes. It is impossible to know to what extent these percentages represent a decrease in local

⁵ Florida's Property Tax Structure: An Analysis of Save Our Homes and Truth in Millage Pursuant to Chapter 2006-311, L.O.F. Florida Department of Revenue. January 2, 2007.

⁶ 710 So. 2d 135, 137 (Fla. App. 1998)

⁷ Property Tax Reform Efforts, An Update. Office of Economic and Demographic Research, January 11, 2007.

government revenue or a shift of tax burden. At one extreme, these numbers may reflect an absolute decrease in the level of collections by local governments, with no shifting of taxes to businesses and non-homestead residential properties. If this is the case, then local government collections for FY 2006-07 were \$7.5 billion lower than they otherwise would have been, with all of this reduction going to homestead property owners. At the other extreme, local governments may have adjusted millages to keep revenues the same as they would have been in the absence of Save Our Homes. If this is the case, then local governments collected the same revenues as they would have in the absence of Save Our Homes. However, homestead property owners paid \$4.1 billion less than they would have, with Non-homestead residential property owners paying \$2.1 billion more and Non-residential property owners paying \$2.0 billion more than they would have absent Save Our Homes. Property taxes levied in Florida have grown 99% in six years.

An increased tax burden for businesses, other things equal, will create a disincentive for business activity in Florida. Owners of rental residential real estate facing an increase in tax liability must either bear the tax increase or shift a portion of the tax increase to renters in the form of higher prices.

Extraordinary growth in Florida real property just values has resulted in rapid increases in assessments for non-homestead property. The median house price rose 90% from July 2001 to July 2006.⁸ The fair market value of real property has outstripped taxpayers' growth in income.

Property Taxes and School Funding

Public schools are funded through a combination of property tax revenues and state general revenue funds. The Legislature annually determines a level of education funding that will be used in the Florida Education Finance Program (FEFP). The portion of this funding that comes from property taxes levied by school boards is known as the Required Local Effort (RLE). Each school board must produce its share of the RLE in order to participate in the FEFP. For FY 2006-07, the statewide RLE provided \$7.36 billion of FEFP funding.

In addition to the millage rate necessary to produce the RLE, school boards can levy two additional discretionary millages, limited by the Legislature to a total of 0.76 mills, for operations, and an additional 2 mills for capital improvements. Finally, there are two other millages that may be levied by school boards with referendum approval.

Tangible Personal Property

Tangible personal property is singled out for special treatment in the Constitution. Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes are excluded from ad valorem taxation.⁹ Household goods up to \$1,000 in value are exempt.¹⁰ Renewable energy source devices may be exempted by general law for 10 years after installation.¹¹ Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, classified for tax purposes, or exempted by general law.¹² Tangible personal property is otherwise subject to taxation.

Section 193.052, F.S., requires that tax returns for tangible personal property be filed in the county where the property is located. The Department of Revenue is directed to promulgate rules to ensure that all railroad and utility property is properly returned in the appropriate county. However, the evaluation or assessment of utility property in each county is the duty of the property appraiser. Department of Revenue form DR-405 requires that a separate return must be filed by a taxpayer for

⁸ Property Tax Reform Efforts, An Update. Office of Economic and Demographic Research, January 11, 2007.

⁹ Art. VII, sec. 1(b), Fla. Const.

¹⁰ Art. VII, sec. 3(b), Fla. Const.

¹¹ Art. VII, sec. 3(d), Fla. Const.

¹² Art. VII, sec. 4(b), Fla. Const.

each location in the county, except for owners of vending machines, propane tanks and similar free-standing property at many locations, who may submit a similar return.

In 2006, the taxable value of the 1,293,043 returns filed was \$103.7 billion. Of those, 997,109 returns had taxable amounts less than \$25,000, with a total taxable value of \$4.5 billion.

Affordable Housing

The cost of housing has risen much faster in recent years than household income. From 2003 through 2005 the affordability of housing fell throughout the state.¹³ In 2003, the median household had sufficient income to purchase a single-family home selling at the median price in 52 counties; by 2005 this was true in only 18 counties. In 2005, 5 counties – Miami-Dade, Collier, Franklin, Walton, and Monroe – had a median household income less than half of what was needed to buy a median-priced single-family home. Florida has more than 1 million households that qualify as extremely-low-income households.¹⁴

Documentary stamp tax revenue supports several state-funded programs through the Florida Housing Finance Corporation. The Florida Housing Finance Corporation is also responsible for allocation and distribution of federal low-income housing tax credits. Community Land Trusts are charitable organizations that build homes on land they own and then sell the improvements to a limited-income person or persons, subject to a 99-year ground lease.

The Florida Constitution provides no exception to the just value standard for assessment of property in Affordable Housing programs. In assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits, shall be considered income to the property, and the actual rental income from rent-restricted units shall be recognized by the property appraiser.¹⁵ Current law provides a property tax exemption for property used to provide affordable housing for eligible individuals if the property is owned entirely by a charitable nonprofit entity meeting certain federal criteria.¹⁶ HB 1375, enacted in the 2007 legislative session, authorizes a county or municipality to adopt an ordinance to allow for the deferral of property taxes and non-ad valorem assessments if the owners of the property are operating, rehabilitating, or renovating affordable rental housing property. The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed.

Working Waterfronts

“Recreational and commercial working waterfront” means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Seaports are excluded from the definition.¹⁷

¹³ The State of Florida’s Housing 2006, Shimberg Center for Affordable Housing, 2007.

¹⁴ *See id.*

¹⁵ S. 193.017, F.S.

¹⁶ S. 196.1978, F.S.

¹⁷ S. 342.07, F.S.

Counties and cities may allow tax deferral of the taxes imposed by working waterfronts¹⁸. Only the taxes levied by the city or county granting the deferral can be deferred. The city or county can determine the:

- Percentage of taxes to be deferred,
- Type of working waterfront property that can defer taxes, and
- The location of the property that may defer taxes.

Tax deferrals and other liens may not exceed 85% of assessed value and the primary mortgage may not exceed 70% of assessed value. The deferred tax and interest (variable up to 9.5%) are due when:

- the property is sold,
- the required property insurance is not maintained, or
- the property ceases to be used as working waterfront.

For coastal counties, the future land use element of comprehensive planning must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07, F.S.¹⁹

Public access to navigable water is diminishing. Commercial working waterfronts face increasing expenses, including taxes and insurance. Establishing new working waterfronts with public access may not be financially feasible.

Low-Income Seniors

There were 1.2 million homesteads in Florida owned by persons 65 or older in 2006. Based on U.S. Census data, 42% of the total population 65 and older has household income below \$25,000. There are 211,000 homesteads benefiting from the current exemption.

Any county or city may allow an additional homestead exemption of up to \$50,000 for any person 65 or older whose household income²⁰ does not exceed \$24,214 (in 2007). The income limit is increased each year by the percentage change in the Consumer Price Index. The exemption only applies to taxes levied by the county or city enacting the exemption.²¹ In 2006, 53 counties and 178 municipalities had implemented the exemption. Prior to the Constitutional amendment effective January 1, 2007, the exemption limit was \$25,000.

In addition, homeowners 65 and older, with household income less than \$24,214 in the prior year, may defer all ad valorem taxes and non-ad valorem assessments²². All senior homesteaders may defer the portion of their tax levy that exceeds 3% of household income. Tax deferrals and other liens may not exceed 85% of assessed value and the primary mortgage may not exceed 70%. Deferred tax and interest (up to 7%) are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

The household income limitation does not capture all income. Household income is measured by "adjusted gross income" as reported to the IRS. This income measure excludes income from a number of sources, including income from tax-free bonds, some social security income, and some types of retirement income.

CHANGES PROPOSED BY THE JOINT RESOLUTION:

¹⁸ S. 197.303, F.S.

¹⁹ S. 163.3177, F.S.

²⁰ As defined in s. 62 of the United States Internal Revenue Code.

²¹ Art. VII, sec. 6(f), Fla. Const., and s. 196.075, F.S.

²² S. 197.243

Ad Valorem Taxes on Homestead Property

The HJR provides for an increase in the homestead exemption. The new homestead exemption will exempt 75% of the first \$200,000 in just value, with a minimum exemption of \$50,000 per homestead. For low income seniors, the minimum exemption will be \$100,000. Additionally, homestead property will receive an exemption of 15% on the next \$300,000 in just value.

The HJR contains a “grandfather” provision that will allow homestead property owners whose “Save Our Homes” benefits, combined with the current homestead exemption, is greater than the benefit under the new homestead exemption to continue to have their homestead assessed under the Save Our Homes provisions..

Constitutional exemptions that are retained under the HJR include those now provided to disabled veterans and low-income seniors.

Tangible Personal Property

The HJR provides an exemption from ad valorem taxes to tangible personal property (TPP) up to a value of \$25,000. The implementing bill, HB 1B provides that taxpayers who receive a total exemption on their TPP will not have to file a return in succeeding years unless their TPP increases to greater than \$25,000.

Affordable Housing

The HJR grants authority to the legislature to provide for assessments of real property used for affordable housing at less than just value. The property must be subject to rent restrictions imposed by a governmental agency.

Working Waterfronts

The HJR grants authority to the legislature to provide for assessments of certain waterfront property at less than just value. Land used exclusively for commercial fishing, land that is open to the public and used predominantly for commercial “water-dependent activities,” and land that is open to the public and used for public access to water can qualify for the new assessment method. The bill defines a “water dependent activity” as an activity that can only be conducted on, in, over, or adjacent to waters that are navigable and that requires direct access to water and involves the use of water as an integral part of such activity.

Low-Income Seniors

As described above, the HJR provides a higher minimum homestead exemption for low-income seniors than for other homeowners.

C. SECTION DIRECTORY:

Not applicable to Joint Resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is no impact on state revenues. See FISCAL COMMENTS below.

2. Expenditures:

There is no impact on state expenditures. See FISCAL COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If approved by the voters, local governments will receive less ad valorem revenue, at current millage rates, as follows:

2007-08	2008-09	2009-10	2010-11	2011-12
	(\$3.6 billion)	(\$3.9 billion)	(\$4.1 billion)	(\$4.3 billion)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers will save:

2007-08	2008-09	2009-10	2010-11	2011-12
	(\$3.6 billion)	(\$3.9 billion)	(\$4.1 billion)	(\$4.3 billion)

D. FISCAL COMMENTS:

The HJR grants a larger homestead exemption to homesteads, thereby reducing the taxable value base for all taxing authorities, including school districts. The Legislature annually determines the level of overall education funding as part of its budget development process. The portion of this funding that comes from local property taxes is known as the Required Local Effort (RLE). This is the amount that each county must produce in order to participate in the FEFP. While the General Appropriations Act only establishes the total required funding level, there is necessarily an implied statewide millage rate that generates that amount. If taxable values are reduced for school districts, then for a given required funding level, local millage rates required to raise this level of revenue must increase. However, a reduced tax base does not necessarily result in decreased funding for schools, since the Legislature establishes school funding in the General Appropriations Act each year and determines what local levies are required.

If this HJR is passed by the voters of Florida and ad valorem taxes paid to school districts are reduced, taxpayers will save \$1.6 billion (11.0%) in FY 2008-09, at current millage rates. If the Legislature chooses to offset this revenue loss to school districts, it could do so either by reducing other state expenditures or enhancing revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of the Florida Constitution does not apply to Joint Resolutions.

2. Other:

A class action lawsuit was filed in February 2007 in the Leon County Circuit Court²³ which alleges that the taxes paid by non-resident owners of residential real property in Florida constitute a disproportionate share of the assessed ad valorem taxes. The lawsuit alleges that the tax burden has a chilling effect on decisions of citizens of the United States to own second homes in Florida and impeded their right to engage in interstate travel and commerce, all in violation of the “dormant commerce clause” of Article I, Section 8 of the United States Constitution and the equal protection clause of the 14th Amendment to the Constitution.

Similar issues were raised in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000). Nonresident taxpayers brought an action challenging the constitutionality of the Florida homestead exemption (and also the Save Our Homes assessment limitation). The District Court of Appeals for the First District of Florida affirmed the ruling of the Leon County circuit court. The court held that the exemption did not violate either the privileges and immunities clause of the Federal Constitution or the “dormant” commerce clause.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

²³ Case No. 37 2007 CA 000582 filed in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.