



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes. The bill:

- 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;
- Increases the exemption for low-income seniors;
- Allows transfer of accumulated assessed value reductions from just value; and
- Creates an additional homestead exemption for first-time homebuyers.

#### B. EFFECT OF PROPOSED CHANGES:

##### **CURRENT SITUATION**

Article VII of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property,<sup>1</sup> and directs the legislature to establish requirements that local governments must follow when levying and administering ad valorem property taxes. The constitution requires that all ad valorem taxation be at a uniform rate within each taxing district<sup>2</sup> and that property be assessed at just value (fair market value) unless a different assessment standard is provided by the constitution.<sup>3</sup>

Following is a description of the current situation for the issues addressed in the bill.

##### ***Homestead Exemption***

Subsection 6 (a)-(c) of Art. VII of the Florida Constitution provides that every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation up to the assessed value of \$25,000.

In 2006 there were 4,368,937 homesteads in Florida, and the homestead exemption reduced the 2006 tax roll by \$108.9 billion.

##### ***Save Our Homes***

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution popularly known as the Save Our Homes amendment. Beginning with the 1994 tax roll, this amendment limited the annual increase in assessments of homestead property to the increase in the Consumer Price Index or 3 percent, whichever is lower. The Save Our Homes limitation first applied to the January 1, 1995 assessment.

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at just value as of January 1 of the first year the property owner establishes homestead. Thereafter the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this

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<sup>1</sup> Sections 1(a) and 9(a), Art. VII, Fla. Const.

<sup>2</sup> Section 2, Art. VII, Fla. Const.

<sup>3</sup> Section 4, Art. VII, Fla. Const.

property is subject to the Save Our Homes assessment limitation. If homestead status is terminated the property is assessed at just value.

In *Smith v. Welton*,<sup>4</sup> the First District Court of Appeal described the purpose of the Save Our Homes Amendment as follows:

The purpose of the amendment is to encourage the preservation of homestead property in 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.

In the twelve years since Save Our Homes first limited the assessment of homestead property, its impact on the assessed value of this property has far exceeded the original expectations of such impact. In 1997, the second year of assessment limitations, Save Our Homes reduced the statewide assessed value of homestead property by 3 percent. In 2006, Save Our Homes reduced homestead just value by more than 38 percent. The \$405 billion reduction from Save Our Homes in 2006 equals approximately 25 percent of total taxable value.

### ***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 income<sup>5</sup> 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.<sup>6</sup> 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 assessments<sup>7</sup>. 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.

### ***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.<sup>8</sup> In 2003, the median household had sufficient

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<sup>4</sup> 710 So. 2d 135, 137 (Fla. App. 1998)

<sup>5</sup> As defined in s. 62 of the United States Internal Revenue Code.

<sup>6</sup> Art. VII, sec. 6(f), Fla. Const., and s. 196.075, F.S.

<sup>7</sup> S. 197.243

<sup>8</sup> The State of Florida's Housing 2006, Shimberg Center for Affordable Housing, 2007.

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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.

### ***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.<sup>12</sup> Household goods up to \$1,000 in value are exempt.<sup>13</sup> Renewable energy source devices may be exempted by general law for 10 years after installation.<sup>14</sup> 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.<sup>15</sup> Tangible personal property not specifically exempt from taxation is subject to ad valorem taxation.

Section 193.152, F.S., requires that tax returns be filed for tangible personal property 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 and 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 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 single return.

In 2006, 1,293,043 tangible personal property tax returns were filed, with a total taxable value of \$103.7 billion. The 997,109 returns with taxable amounts less than \$25,000 accounted for only \$4.5 billion of the total taxable value.

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<sup>9</sup> *See id.*

<sup>10</sup> S. 193.017, F.S.

<sup>11</sup> S. 196.1978, F.S.

<sup>12</sup> Art. VII, sec. 1(b), Fla. Const.

<sup>13</sup> Art. VII, sec. 3(b), Fla. Const.

<sup>14</sup> Art. VII, sec. 3(d), Fla. Const.

<sup>15</sup> Art. VII, sec. 4(b), Fla. Const.

## Revenue/Tax Rate Cap

Chapter Law 2007-321 (2007B Session) required reductions in property tax levies for counties, cities, and special districts based on the past behavior of the taxing jurisdiction. Counties, cities, and special districts may override these maximum millage rates under specified circumstances.

### 2007-2008

For fiscal year 2007-08, property tax levies must be reduced to the FY 2006-07 level minus a specified percentage factor. This is the same outcome as reducing the rolled-back rate by the specified percentage. Revenues will still be allowed to increase due to the addition of new construction.

Cities and counties are separately grouped according to how rapidly their per capita property taxes have grown over the past five years, compared with the statewide average for their respective category. Per capita values are used to allow comparisons of revenue growth across cities, or across counties, that may have different population growth rates. Special consideration was given to fiscally limited jurisdictions. The table below summarizes these percentage reduction factors.

Reduction Factor	Revenue Growth Compared to State Average	
	Counties	Cities
0%	Less than -5%	Less than -6%
3%	-5% to -3%	-6% to -4%
5%	-3% to -1%	-4% to -1%
7%	-1% to +1%	-1% to +0.8%
9%	+1% or more	+0.8% or more

Fiscally limited counties and cities are placed in the 3% cut bracket. Fiscally limited counties are counties currently defined in statute as "fiscally constrained" and for which the revenue value of one mill per capita is less than \$100. The revenue value limitation has the effect of removing Gulf and Franklin Counties. Fiscally limited cities are cities that are either in a fiscally limited county or cities that have been in a state of financial emergency at any time since July 1, 2001.

All independent special districts are treated uniformly with a 3% reduction factor. Jurisdictions that have not levied property taxes for at least five years are exempt from the reduction. The reductions do not apply to voted levies to repay bonds issued pursuant to Article VII, section 12 of the Florida Constitution and voted levies for less than two years pursuant to Article VII, section 9(b) of the Florida Constitution.

An override of the millage limitation is allowed. To exceed the reduced tax level up to the rolled-back rate requires a 2/3 vote of the governing board. To exceed the reduced tax level up to the prior year non-voted millage rate requires a unanimous vote of the governing board. Above this level requires voter approval. If a county or city exceeds the required millage limitation without the required extraordinary vote, that county or city will not receive its half-cent sales tax distribution.

### 2008-2009

There will be a further tax cut and cap adjustment in FY 2008-09. The millage limitation is the rolled-back rate plus growth in per capita Florida personal income, except that the prior year revenues used in the calculation of the limitation must be reduced by the amount collected from a millage rate approved by a super majority vote in excess of the maximum rate. To exceed the millage limitation by 10%, a 2/3 vote of the governing board is required. For a larger increase, a unanimous vote or a referendum is required.

## 2009-2010 and thereafter

Following the two transition years, property taxes for cities, counties and school districts may grow by the taxes levied on new construction and the growth of per capita Florida personal income. Override may be achieved up to 10% over the cap by a 2/3 vote of the governing board. Overrides above this require a unanimous vote of the governing board or a referendum.

The tax growth cap will allow property taxes to increase with the state economy, while preventing dramatic growth in property taxes such as those experienced during the last four years.

### ***Presumption of Correctness***

Section 194.301, F.S., provides a presumption of correctness to the assessed value determined by the property appraiser. The presumption of correctness is lost if the taxpayer can show by a preponderance of the evidence that the appraiser failed to properly consider the 8 criteria in s. 193.011, F.S., or if the appraiser's assessment is arbitrary.

### ***Assessment Rolls***

Section 193.114(2), F.S., specifies the information that must be provided by the property appraiser on the assessment roll, including the following: parcel identifier; the just value of property; assessed value; millage rates; a categorization of all applicable exemptions; and the amount of taxes.

## **EFFECT OF PROPOSED CHANGES**

### ***Double Homestead Exemption***

The bill implements the provision in the constitutional amendment that doubles the homestead exemption. It provides an additional \$25,000 homestead exemption to be applied after the first \$50,000 in value (i.e., the second \$25,000 in value remain subject to tax). This exemption does not apply to school taxes.

### ***Low-Income Senior Exemption***

The bill implements the provision in the constitutional amendment that creates a statewide exemption for low-income seniors. Anyone 65 or older whose household income is less than \$23,604 (adjusted annually for inflation) will be totally exempt from taxes on their homestead property. The definition of household income includes all income of the household and is more restrictive than for the current local option additional exemption for low income seniors. This provision applies to all taxes.

### ***First-time Homebuyers Exemption***

The bill implements the provision in the constitutional amendment that creates an additional homestead exemption for first-time homebuyers. First-time homebuyers in Florida that qualify for the homestead exemption will be eligible for an additional exemption equal to 25 percent of the value of their new home, with a maximum exemption equal to 25 percent of the county average home value. This exemption will decrease as the home accumulates a Save Our Homes differential. This exemption is available to 2007 first-time homebuyers who qualify for a homestead exemption January 1, 2008. This exemption does not apply to school taxes.

### ***Portability***

The bill implements the provision in the constitutional amendment that allows the transfer of the accumulated benefits of assessment limitations to a new homestead. Homestead property owners will be allowed to transfer the Save Our Homes benefit to a new homestead within two years of giving up

their previous homestead. If the new homestead is more valuable than the old one the entire benefit can be transferred; if the new homestead is less valuable the transferable benefit will be proportional to the value of the new homestead. (For those who gave up their homestead in 2007, the benefit may be transferred if they apply for a new homestead January 1, 2008 or January 1, 2009.) The transferred differential does not apply to school taxes.

### ***Affordable Housing***

The bill implements the provision in the constitutional amendment that allows the assessment of affordable housing property at less than just value. It provides that property used for rent-restricted affordable housing will be assessed on the basis of its use as workforce rental housing or affordable rental housing. The restricted assessments will not apply to school taxes.

The bill also limits the assessment of improvements to real property owned by a community land trust used for affordable housing and provides a tax exemption to property owned by a limited partnership and used to provide affordable housing, if the sole general partner is a not-for-profit corporation. This provision applies to all taxes.

### ***Tangible Personal Property Exemption***

The bill implements the provision in the constitutional amendment providing an exemption for tangible personal property. It provides a \$25,000 exemption for each tangible personal property return. This provision applies to all taxes.

### ***Millage Rate Restrictions***

Local (non-school) government property tax revenues are limited in fiscal year 2008-09 to prevent millage rate increases that would offset reductions in the tax roll that result from the additional exemptions. This does not restrict school district taxes.

### ***Presumption of Correctness***

The bill removes the property appraiser's presumption of correctness in an administrative or judicial action in which a taxpayer challenges an assessment of value of non-homestead property. If the value of a parcel increased more than the overall increase in value for its class of property, the property appraiser will lose the presumption of correctness and the taxpayer will have to prove by a preponderance of the evidence that the assessment exceeds just value. If the appraiser retains the presumption, the taxpayer must prove by clear and convincing evidence that the assessment exceeds just value. This provision applies to all taxes.

### ***Assessment Rolls***

The bill amends s. 194.114, F.S., to require that just value, categorization of exemptions, millage levies, and taxes be listed separately for school district levies and non-school district levies.

## **C. SECTION DIRECTORY:**

Section 1 amends s. 194.301, F.S., presumption of correctness.

Section 2 provides an effective date for section 1 of upon becoming law.

Section 3 amends s. 193.017, F.S., assessment of structural improvements on land owned by a community land trust and used to provide affordable housing.

Section 4 amends s. 196.1978, F.S., affordable housing property exemption.

Section 5 authorized the Department of Revenue to adopt emergency rules for purposes of implementing sections 3 and 4.

Section 6 amends s. 196.002, F.S., legislative intent.

Section 7 amends s. 193.114, F.S., related to the format of assessment rolls.

Section 8 amends s. 193.155(3), F.S., redesignates ss. 193.155(8) and (9), F.S., and creates a new s. 193.155(8), F.S., homestead assessments.

Section 9 amends s. 196.031, F.S., exemption of homesteads.

Section 10 creates s. 196.078, F.S., additional homestead exemption for first-time Florida homebuyers.

Section 11 creates s. 196.098, F.S., exemption for low-income seniors.

Section 12 amends s. 196.161, F.S., regarding penalties for improper receipt of a homestead exemption.

Section 13 amends s. 197.252, F.S., homestead tax deferral.

Section 14 creates s. 196.183, F.S., exemption for tangible personal property.

Section 15 creates s. 193.803, F.S., assessment of eligible rental property used for workforce and affordable housing; classification.

Section 16 amends s. 192.0105, F.S., taxpayer rights.

Section 17 amends s. 193.052, F.S., preparation and serving of returns.

Section 18 amends s. 194.011, F.S., assessment notice; objections to assessments.

Section 19 amends s. 195.073, F.S., classification of property.

Section 20 amends s. 195.096, F.S., review of assessment rolls.

Section 21 creates s. 200.186, F.S., maximum millage rates for the 2008-2009 fiscal year.

Section 22 directs the Department of Revenue to report the results of the implementation of chapter 2007-321, Laws of Florida by March 1, 2008.

Section 23 provides an effective date of January 1, 2008 for sections 3-5 and 20; and retroactively to January 1, 2008 for sections 6-19, upon approval of the joint resolution by the voters at the January 29, 2008 special election or shall apply to the 2009 tax rolls if approved by the voters at the November 2008 general election.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

If the changes to the State Constitution in the House Joint Resolution are approved by the voters, the ad valorem tax base will be reduced. In addition other provisions of the bill will reduce the tax base. At current millage rates, these reductions in the tax base will result in estimated reduced tax



revenues to local governments in the amounts shown in the table below. The Revenue Estimating Conference has not addressed the provisions of this bill.

	2008-09	2009-10	2010-11	2011-12
Homestead Exemption	(876)	(888)	(900)	(907)
Portability	(184)	(445)	(666)	(899)
New Homesteaders	(65)	(149)	(221)	(264)
Low income Seniors	(629)	(643)	(658)	(675)
Affordable Housing	(45)	(46)	(47)	(48)
Tangible Personal Property	(177)	(179)	(181)	(182)
Presumption of Correctness	(87)	(177)	(271)	(369)
<b>Total</b>	<b>(2,064)</b>	<b>(2,527)</b>	<b>(2,943)</b>	<b>(3,344)</b>

These estimates may be overstated due to interactions between various provisions.

2. Expenditures:

Counties are likely to experience higher expenditures from changes made to the Value Adjustment Board process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A significant number of properties will experience a decrease in assessed value, due to the provisions of the bill, leading to reduced property tax payments by their owners.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE). The legislature sets the RLE that must be raised by school districts from property taxes. The provisions of this bill that lead to lower assessed values may limit the amount of RLE the legislature may set in the future.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to a bill implementing a constitutional amendment. However, this bill contains additional provisions. The mandates provision appears to apply to these provisions because by reducing the tax base, they reduce the authority that municipalities or counties have to raise revenues. The bill does not appear to qualify for an exemption or exception. In the absence of an applicable exemption or exception, Article VII, section 18(b) prohibits the legislature from enacting, amending or repealing any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the executive director of the Department of Revenue to adopt emergency rules pursuant to ss. 120.536(1) and 120.54(4), Florida Statutes, for purposes of implementing sections 3 and 4 of this act.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: None.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On October 15, 2007, the House Government Efficiency & Accountability Council adopted 7 amendments to PCB GEAC 07D-02. The amendments may be summarized as follows:

Amendment 1. Expanded the number of property classes that will be considered to determine when the property appraiser loses the presumption of correctness.

Amendment 2. Clarified language regarding valuation of community land trusts.

Amendment 3. Required that new information needed as a result of this bill be included in the tax rolls.

Amendment 4. Made technical and clarifying changes to language implementing the transferability of Save Our Homes accumulated benefits (Portability).

Substitute Amendment for Amendment 5. Made technical and clarifying changes to language implementing the first-time Florida homebuyer exemption.

Amendment 6. Made technical and clarifying changes to language implementing the low-income seniors exemption.

Amendment 7. Applied the statutory section dealing with penalties for non-residents claiming homestead exemptions to persons claiming portability and the new first-time Florida homebuyer benefit.

This analysis reflects substantive changes made as a result of the amendments.