

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 1164

INTRODUCER: Senator Fasano

SUBJECT: Homestead Property Assessment/Declining Value

DATE: March 12, 2009

REVISED: 03/17/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/2 amendments
2.			FT	
3.			EA	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This joint resolution proposes an amendment to Section 4, Article VII, of the State Constitution to provide that the assessed value of the homestead property may not be increased in any year where the just value of the property is lower than the previous year. The requirement for a capped increase in the assessed value of homestead property in any year where the just value of such property increases over the previous year remains unchanged.

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

II. Present Situation:

“Save Our Homes” Assessment Limitation (s. 4(d), Art. VII of the State Constitution)

Section 4, Article VII of the State Constitution, was amended in 1992 when the assessment limitation popularly known as “Save Our Homes” was adopted by 54 percent of the voters voting on the proposed amendment. The amendment provided the following:

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

Section 193.155, F.S. (1994)

The 1994 Legislature enacted chapter 94-353, Laws of Florida, to implement the “Save Our Homes” amendment. Homestead property was required to be assessed at just value as of January 1, 1994.¹ Beginning in 1995, or the year following the year in which the property receives a homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from the reassessment may not exceed the lower of the following:

- Three percent of the assessed value of the property for the prior year; or
- The percentage change in the CPI for All Urban Consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

If the limited assessed value of the property exceeds the just value, the assessed value must be lowered to the just value. While no specific rulemaking authority was provided to the Department of Revenue to adopt rules implementing the statutory requirements, the department adopted rules pursuant to the general grant of rulemaking authority contained in s. 195.027, F.S.²

Rule 12D-8.0062, Florida Administrative Code

In October 1995, the Governor and the Cabinet as head of the Department of Revenue adopted Rule 12D-8.0062, F.A.C., entitled “Assessments; Homestead; Limitations,” which is popularly known as the “Recapture Rule.” The rule “governs the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, Section 4(c), Florida Constitution and Section 193.155, F.S.,” with exceptions adopted in other rule provisions for changes, additions, or improvements, changes of ownership, and corrections.³

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

² 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 the administration will be uniform, just, and otherwise in compliance with the requirements of general law and the constitution. At the time the Legislature implemented the constitutional provision, this grant of rulemaking authority had not been amended since 1991.

³ The “Save Our Homes” constitutional amendment provided that changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law, and that once the change, addition, reduction or improvement was made, the property was to be assessed as provided in the amendment.

Subsection (5) of the rule provides for an increase in assessed value limited to the lower of three percent or the percentage change in the CPI, whichever is lower. Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be the prior year's assessed value decreased by that percentage.

Markham v Department of Revenue (DOAH Case No. 95-1339RP)

In March of 1995, William Markham, the Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed rule to implement s. 193.155, F.S., alleging that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious." The petition also claimed that the "proposed rule is at variance with the Constitution." The petitioner contended that subsection (5) conflicted with the intent of the framers of the ballot initiative, and that a third limitation relating to market value or movement should be incorporated into the language of the rule in order to make it compatible with the constitution.

On June 21, 1995, a Final Order was issued by the hearing officer, who determined that subsections (5) and (6) of the proposed rule were a valid exercise of delegated legislative authority, and that subsection (5) was consistent with Article VII, Section 4(c) of the Florida Constitution. The hearing officer determined that the challenged portions of the rule were consistent with the agency's mandate to adopt such rules (s. 195.027(1), F.S.), the rules had a factual and logical underpinning, they were plain and unambiguous, and did not conflict with the law implemented.

With respect to the petitioner's assertion of a third limitation grounded on market movement, meaning that in a year in which the market value did not increase, the assessed value of a homestead property would not increase, the hearing officer determined that the rule was not constitutionally infirm because there was no mention of market movement or market value in the ballot summary, and because no legislative history on the third limitation was provided by the petitioner.

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to s. 4(d), Art. VII, State Constitution, to provide that in any year when the just value of a homestead property is lower than the just value on the preceding January 1, the assessed value of the property may not be increased. The joint resolution contains other technical corrections and revisions to the provisions of s. 4, Art. VII, State Constitution.

If approved by 60 percent of the electors voting on the measure in the next general election, the amendment will take effect on January 10, 2011, the first Monday after the first Tuesday in January following the election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions of s. 18, Art. VII, State Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 1, Art. X, State 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's office or at a special election held for the purpose.

Section 5(e), Art. XI, State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, the amendment will take effect on January 10, 2011, the first Monday after the first Tuesday in January following the election.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None, other than those already explained.

B. Private Sector Impact:

The private sector impact of this joint resolution is the inverse of the government sector impact. Tax revenues previously collected by local governments will be retained by taxpayers.

C. Government Sector Impact:

The following consensus estimate for SB 304 (a similar proposal) was adopted at the February 6, 2009, Revenue Estimating Conference, held by the Legislature's Office of Economic and Demographic Research, to determine the impact of the proposed legislation:

School Tax Revenue:				
(\$2.9m)	(\$14.9m)	(\$23.8m)	(\$41.3m)	(\$47.3m)
Non-School Tax Revenue:				
(\$4.3m)	(\$20.7m)	(\$33.1m)	(\$57.4m)	(\$65.7m)
TOTAL TAX REVENUE				
(\$6.9m) ⁴	(\$35.6m)	(\$56.9m)	(\$98.7m)	(\$113m)
Reduction in School Taxable Value:				
<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
(\$401m)	(\$2.06b)	(\$3.3b)	(\$5.7b)	(\$6.5b)

Section 5(d), Art. XI, State Constitution, requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held. The Department of State, Division of Elections, estimated the average non-recurring per word cost of publication⁵ for this joint resolution to be \$171,322, and noted that there is no appropriation associated with the joint resolution at this time.

VI. Technical Deficiencies:

The proposed resolution contains technical deficiencies in the title, in the schedule, and in the ballot summary, which all reference “increases in the assessed value of homestead property if the market value of the property decreases.” Although “market value” and “just value” are considered to be the same,⁶ s. 4(d), Art. VII, State Constitution, requires the annual assessment of homestead property at “just value,” provides that the change to the assessment is limited, and provides that the assessed value of homestead may never exceed “just value.”

VII. Related Issues:

In January 2008, Florida’s voters adopted an amendment to the State Constitution to provide limitations on property tax assessments. The amendment (popularly known as Amendment 1) passed overwhelmingly and provided the following:

- An increase in the homestead exemption applicable to all taxes levied except school districts,
- Transfer to a new homestead of the benefits accrued under the Save Our Homes assessment limitation,
- A \$25,000 exemption for tangible personal property, and

⁴ The conference adopted an estimated total annualized revenue impact in the first year of (\$113m).

⁵ The Department of State provided an average per word cost of \$92.01 for every proposed amendment to the State Constitution for this fiscal year. The calculated cost is the cost of full publication.

⁶ 2 “Just value” and “fair market value” are legally synonymous, and “fair market value” may be established as the amount a purchaser, willing but not obliged to buy, would pay one willing but not obliged to sell. See “*Schuler v Walter*, 176 So.2d 81, (Fla. 1965).

- Assessment limitations for nonhomestead real property, excluding school districts from the limitation.

Section 4(g), Art. VII of the State Constitution, provides that for all levies other than school levies, assessments of residential real property, as defined by general law, which contains nine units or fewer shall be changed annually on a date provided by law, but that such change may not exceed 10 percent of the assessed value of the property in the prior year. No assessment can exceed just value.

Section 4(h), Art. VII of the State Constitution, provides that for all levies other than school levies, assessments of real property not subject to limitations authorized in other provisions of the constitution shall be changed annually on a date provided by law, but that such change may not exceed 10 percent of the assessed value of the property in the prior year. No assessment can exceed just value.

If this joint resolution is adopted by the voters, it is likely that similar provisions will be proposed for these two assessment limitations.

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:

Barcode 355440 by Community Affairs on March 17, 2009:

Technical amendment to reinstate inadvertently deleted language relating to the U.S. Department of Labor, Bureau of Labor Statistics.

Barcode 952246 by Community Affairs on March 17, 2009:

Technical amendment to correct references in the bill from “market value” to “just value.”