

**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.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 1564

INTRODUCER: Senator Fasano

SUBJECT: Special Election

DATE: March 25, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.			RC	
3.			BC	
4.				
5.				
6.				

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**I. Summary:**

This bill provides for a special election to be held on the date of the presidential primary in 2012 for statewide elector approval or rejection of the amendments to the Florida Constitution proposed in Senate Joint Resolution (SJR) 658 or House Joint Resolution (HJR) 381.

This bill will require approval by a three-fourths vote by the membership of each house of the Legislature and adoption of SJR 658 or HJR 381 by both houses of the Legislature for passage.

This bill creates an undesignated section of law.

**II. Present Situation:**

**Property Valuation**

**A.) 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>1</sup>

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<sup>1</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).

***B.) Assessed Value***

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.<sup>2</sup> 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 that 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>

***C.) Additional Assessment Limitations***

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for 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, 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>9</sup>

Article XII, section 27 of the Florida Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) 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.

***D.) 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>10</sup>

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<sup>2</sup> The constitutional provisions in article VII, section 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

<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, s. 4(g) and (h).

<sup>10</sup> FLA. CONST. art. VII, ss. 3 and 6.

## 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 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.

## Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot (2009 SJR 532)

In 2009, the Legislature passed SJR 532 which was scheduled to go before the voters as Amendment 3 on the November 2010 ballot. The proposed amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent annually and to provide an additional homestead exemption for “a person or persons” who have not owned a principal residence in the previous *eight* years that is 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 decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years.<sup>11</sup>

However, 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 Art. XI, section 5(a) of the Florida Constitution.<sup>12</sup> The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment “shall be submitted to the electors at the next general election.” Specifically, the Court stated that:

Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.<sup>13</sup>

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall 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, 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>14</sup>

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<sup>11</sup> Fla. CS for SJR 532, 1<sup>st</sup> Eng. (2009) (Senator Lynn and others).

<sup>12</sup> *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).

<sup>13</sup> *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).

<sup>14</sup> *Id.* at 659, citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were “neither accurate nor informative” and “are confusing to the average voter.”<sup>15</sup> The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the “lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption.”<sup>16</sup>
- The term “new homestead owners” in the title coupled with “first-time homestead” in the summary is ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.<sup>17</sup>
- The use of both the terms “principal residence” and “first-time homestead” in the ballot title and summary is misleading.<sup>18</sup>
- There is a material omission in the ballot title and summary, as they fail to “note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years.”<sup>19</sup>

## **2011 Regular Session: Senate Joint Resolution 658 and House Joint Resolution 381**

### ***A.) Senate Joint Resolution 658***

Senate Joint Resolution (SJR) 658 proposes an amendment to Article VII, section 4 of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent.<sup>20</sup>

SJR 658 also proposes an amendment to Article VII, section 6 of the Florida Constitution, to create an additional homestead exemption for specified homestead owners. This amendment allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII of the Florida Constitution, that have not previously received a homestead exemption in the past three calendar years to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property up to \$200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.<sup>21</sup>

### ***B.) House Joint Resolution 381***<sup>22</sup>

HJR 381 makes similar amendments to sections 4 and 6 of Article VII, of the Florida Constitution. However, the recapture provision in HJR 381 is permissive and it also applies to certain non-homestead properties that are addressed in Article VII, section 4 (g) and (h), of the

<sup>15</sup> *Id.* at 657 and 660.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Roberts*, at 657 and 660.

<sup>19</sup> *Id.* at 657 and 661.

<sup>20</sup> See CS/SJR 658 (2011 Regular Session).

<sup>21</sup> *Id.*

<sup>22</sup> See CS/CS/CS HJR 381 (2011 Regular Session).

Florida Constitution. HJR 381 proposes to remove language in the constitution which would have repealed subsections (f) and (g) of Section 4 of Art. VII, effective January 1, 2019.

HJR 381 also provides different effective dates for the proposed constitutional amendments.

- Amendments to Article VII, section 4 of the Florida Constitution, prohibiting increases in the assessed value of homestead property if the just value of the property decreases and reducing the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent.
  - SJR 658: takes effect January 1 2013.
  - HJR 381: bifurcates the effective date
    - If submitted to the electors at a special election on the date of the 2012 presidential primary, it shall take effect upon elector approval and operate retroactively to January 1, 2012.
    - If submitted to the electors at the 2012 general election, it shall take effect on January 1, 2013.
- The amendment to Article VII, section 6 of the Florida Constitution, providing an additional homestead exemption for homestead property owners who have not owned homestead property in the previous three calendar years.
  - SJR 658: applies to properties purchased on or after January 1, 2012, and takes effect January 1, 2013.
  - HJR 381: bifurcates the effective date
    - If submitted to the electors at a special election on the date of the 2012 presidential primary, it shall apply to properties purchased on or after January 1, 2011, and shall take effect upon approval by the electors and operate retroactively to January 1, 2012.
    - If submitted to the electors at the 2012 general election, it shall apply to properties purchased on or after January 1, 2012, and shall take effect January 1, 2013.

### **Constitutional Amendments**

Section 5, Art. XI, 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. To submit the joint resolution at an earlier special election, the Legislature must adopt a separate legislation indicating for such special election that must be passed by a three-fourths vote of the membership of each house of the Legislature. 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 90 days after filing for that purpose.

Section 5(d), Art. XI, 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.

Section 5(e), Art. XI, 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.

### **Special Elections and Primaries**

Article XI, Section 5(a), of the Florida Constitution allows the Legislature to submit a joint resolution “at an earlier special election pursuant to a law that is enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.”

Section 100.101(3), F.S., allows for a special election or special primary election “if it is necessary to elect presidential electors, by reason of the offices of the President and Vice President both having become vacant.” All laws applicable to general elections shall be applicable to special elections or special primary elections.<sup>23</sup> “The Department of State shall verify the expenses of each special election and each special primary election and authorize payment for reimbursement to each county affected.”<sup>24</sup>

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

**Section 1** provides for a special election to be held on the date of the presidential primary in 2012, pursuant to Article XI, section 5 of the Florida Constitution, to submit for state elector approval or rejection, the amendments to the State Constitution proposed in Senate Joint Resolution 658 or House Joint Resolution 381.

The special election shall be held concurrently with other statewide elections held on that day.

**Section 2** requires publication of notice be provided in accordance with Article XI, section 5 of the Florida Constitution, and that the special election be held as other special elections are held.

**Section 3** appropriates \$560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the purpose of advertising the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

**Section 4** provides that this act shall take effect upon becoming law if enacted by a vote of at least three-fourths of the membership of each house of the Legislature and if Senate Joint Resolution 658 or House Joint Resolution 381 is adopted by both houses of the Legislature.

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<sup>23</sup> Section 100.191, F.S.

<sup>24</sup> Section 100.102, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill seeks to implement the proposed constitutional amendments to sections 4 and 6 of Article VII of the Florida Constitution, contained in SJR 658 or HJR 658, 2011 Regular Session, subject to voter approval. For these reasons, the bill does not fall under the mandate provisions in Article VII, section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

This bill appropriates \$560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the Department to advertise the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

If SJR 658 or HJR 381 is approved by the voters, this bill will provide ad valorem tax relief to specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the 3 percent assessment limitation. The provisions of this bill, as implemented by either joint resolution, will have an effect on local government revenue.

**B. Private Sector Impact:****Special Election**

As a result of this bill, electors of the state will be able to vote on the constitutional amendments proposed in SJR 658 or HJR 381 during a special election held concurrent with the 2012 presidential preference primary.

**SJR 658 and HJR 381*****A.) Assessment Limitation on Homestead Property (Recapture Rule)***

If SJR 658 or HJR 381 is approved by the voters, taxes will be reduced for those taxpayers whose homesteads have depreciated but are still assessed at less than just value. The joint resolution will redistribute the tax burden. It may benefit homestead property that has a "Save Our Homes" differential; however, 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.

***B.) Assessment Limitation on Non-Homestead Property and Residential & Non-Residential Property***

If SJR 658 or HJR 381 is approved by the voters, owners of existing residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year. 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.

***C.) Additional Homestead Exemption for Specified Homestead Owners***

If SJR 658 or HJR 381 is approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase significantly each year. 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:**

**Constitutional Amendment Publication Costs**

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week, preceding the general election.<sup>25</sup> Costs for advertising vary depending upon the length of the amendment. 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.

This bill appropriates \$560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 Fiscal Year for the Department to advertise the constitutional amendments being submitted to the electors of this state at the special election called by this Act.

**SJR 658 and HJR 381**

If SJR 658 or HJR 381 is approved by the voters and the provisions of this bill take effect, local governments may experience a reduction in the ad valorem tax base. The revenue estimating conference adopted an indeterminate negative estimate for SJR 658 and HJR 381 since those amendments would require voter approval.

***A.) Assessment Limitation on Homestead Property (Recapture Rule)***

The Revenue Estimating Conference has not reviewed the recapture provisions of SJR 658, however when addressing similar legislation on the recapture amendment in

<sup>25</sup> FLA. CONST. art. XI, s. 5(d).



SJR 210 (2011), the Revenue Estimating Conference determined that the fiscal impact on school taxes, should the joint resolution be approved by the voters, would be as follows for :

FY 2013-14	FY 2014-15	Recurring Impact
-\$5.0 million	-\$8.0 million	-\$17.0 million

26

The fiscal impact on non-school taxes would be as follows:

FY 2013-14	FY 2014-15	Recurring Impact
-\$6.0 million	-\$11.0 million	-\$18.0 million

27

***B.) Assessment Limitation on Non-Homestead Property***

Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for reducing the limitation on annual assessment increases for non-homestead property from 10 percent to 3 percent would be as follows:<sup>28</sup>

For the January 1, 2013, effective date (SJR 658):

FY 2013-14	FY 2014-15	FY 2015-16
-\$225.0 million	-\$526.1 million	-\$903.9 million

For the January 1, 2012, effective date (HJR 381):<sup>29</sup>

FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
-\$121.6 million	-\$326.1 million	-\$619.6 million	-\$990.9 million

***C.) Additional Homestead Exemption for Specified Homestead Owners***

Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows:

For the January 1, 2013, effective date (SJR 658):<sup>30</sup>

FY 2013-14	FY 2014-15	Recurring Impact
-\$94.5 million	-\$186.5 million	-\$344.5 million

<sup>26</sup> Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).

<sup>27</sup> Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).

<sup>28</sup> Revenue Estimating Conference, *Reduction of annual assessment limitation for non-homestead property from 10% to 3%, HJR 381, SJR 658* (March 14, 2011).

<sup>29</sup> **NOTE:** The Revenue Estimating Conference adopted their fiscal analysis on HJR 381 prior to the amendments to HJR 381 that were adopted on March 29, 2011.

<sup>30</sup> Revenue Estimating Conference, *First-Time Homesteaders part of SJR 658 & HJR 381* (Feb. 20, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers).

For the January 1, 2012, effective date (HJR 381):<sup>31</sup>

FY 2012-13	FY 2013-14	FY 2014-15	Recurring Impact
-\$110.0 million	-\$165.1 million	-\$221.0 million	-\$281.0 million

## VI. Technical Deficiencies:

The Department of Revenue recommends replacing the term “fair market value” on lines 9 and 10 in the title of the bill and inserting “just value.” The Florida Department of Revenue has stated that the use of different terms could generate a perception that two different things are intended.<sup>32</sup> The Department also states that the term “just value” statutorily includes a deduction for costs of sale and that there is currently an operational and quantitative difference between market value and just value in Florida’s property tax system pursuant to ss. 193.011(8) and 192.001(18), F.S.<sup>33</sup>

## 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>31</sup> Revenue Estimating Conference, *First-Time Homesteaders part of HJR 381* (March 9, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers). **NOTE:** The Revenue Estimating Conference adopted their fiscal analysis on HJR 381 prior to the amendments to HJR 381 that were adopted on March 29, 2011.

<sup>32</sup> Florida Department of Revenue, *SB 1564 Fiscal Analysis*, at 3 (March 29, 2011)(on file with the Senate Committee on Community Affairs).

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