

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: SB 1722

INTRODUCER: Senator Fasano

SUBJECT: Ad Valorem Taxation

DATE: March 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill reduces the limitation on annual assessment increases applicable to non-homestead property and residential and nonresidential property from 10 percent to 3 percent. The bill also provides an additional homestead exemption for specified “first-time Florida homesteaders,” as defined herein.

Upon voter approval of HJR 381 or SJR 658, this bill substantially amends sections 193.1554 and 193.1555 of the Florida Statutes.

Upon voter approval of HJR 381 or SJR 658, this bill creates section 196.078 of the Florida Statutes, and creates an undesignated section of law to provide emergency rulemaking authority to the Department of Revenue.

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.¹

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.² 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.³ 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.⁴ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁵ 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.⁶ 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.⁷ Certain working waterfront property is assessed based upon the property's current use.⁸

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.⁹

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.

¹ 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).

² The constitutional provisions in article VII, section 4 of the Florida Constitution, were implemented in Part II of ch. 193, F.S.

³ FLA. CONST. art. VII, s. 4(a).

⁴ FLA. CONST. art. VII, s. 4(c).

⁵ FLA. CONST. art. VII, s. 4(e).

⁶ FLA. CONST. art. VII, s. 4(f).

⁷ FLA. CONST. art. VII, s. 4(i).

⁸ FLA. CONST. art. VII, s. 4(j).

⁹ FLA. CONST. art. VII, s. 4(g) and (h).

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.¹⁰

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.¹¹

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.¹² 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.¹³

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:

¹⁰ FLA. CONST. art. VII, ss. 3 and 6.

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

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

¹³ *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)).

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’.”¹⁴

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.”¹⁵ 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.”¹⁶
- 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.¹⁷
- The use of both the terms “principal residence” and “first-time homestead” in the ballot title and summary is misleading.¹⁸
- 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.”¹⁹

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.²⁰

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 years²¹ to receive an additional homestead exemption equal to 50 percent of the just value of the

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

¹⁵ *Id.* at 657 and 660.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Roberts*, at 657 and 660.

¹⁹ *Id.* at 657 and 661.

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

²¹ SJR 658 specifies “three calendar years,” HJR 381 just states “three years.”

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.²²

B.) House Joint Resolution 381

HJR 381 makes similar amendments to sections 4 and 6 of Article VII of the Florida Constitution. However, HJR 381 does not amend Article VII, section 4 of the Florida Constitution to prohibit increases in the assessed value of the homestead property if the just value of the property decreases.²³

SJR 658 and HJR 381 also provide different effective dates:

- The reduction in non-homestead property annual assessment increases from 10 to 3 percent takes effect January 1, 2013, in SJR 658, whereas it takes effect January 1, 2012, in HJR 381.
- The additional homestead exemption applies to properties purchased on or after January 1, 2012, and takes effect January 1, 2013, in SJR 658, whereas it applies to properties purchased on or after January 1, 2011, and takes effect January 1, 2012, in HJR 381.

III. Effect of Proposed Changes:

This bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill provides separate amendments to each statute based upon when the joint resolution is approved by the voters, which may be: during a general election held in November 2012 *or* during a special election held concurrent with the presidential preference primary in 2012.

Assessment of Non-Homestead Residential Property

Section 1 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2013.

Section 2 Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2012.

Assessment of Certain Residential and Non-Residential Real Property

Section 3 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2013.

²² *Id.*

²³ See CS/HJR 381 (2011 Regular Session).

Section 4 Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2012.

Additional Homestead Exemption for Specified Homestead Owners

Section 5 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as “first-time homesteaders”).

Specifically this section:

- Definition Defines “first-time Florida homesteader” as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount 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. Not more than one exemption shall be allowed per homestead property.
- Sworn Statement Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Section 6 Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as “first-time homesteaders”).

Similar to section 5 of the bill, this section:

- Definition Defines “first-time Florida homesteader” as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount 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. Not more than one exemption shall be allowed per homestead property.

- Sworn Statement Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Department of Revenue Emergency Rulemaking Authority

Section 7 provides that in anticipation of implementing this act, the executive director of the Department of Revenue (DOR) is authorized to adopt emergency rules under ss. 120.536(1) and 120.54(4), F.S., in order to make the necessary changes and preparations so that forms, methods, and electronic or other data records are ready and in place if the relative provisions of this act become law.

The bill also states that, notwithstanding other provisions of law, such DOR emergency rules shall remain in effect for 18 months after the date of adoption and may be renewed thereafter during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Effective Date

Section 8 provides that this act shall take effect upon becoming law, except that:

- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *special election held concurrent with the presidential preference primary in 2012* shall apply retroactively to the 2012 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such special election.
- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *general election held in November 2012* shall apply to the 2013 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such general election.

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 HJR 381 or SJR 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:

If HJR 381 or SJR 658 is approved by the voters, this bill will provide an 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:

Assessment Limitation on Non-Homestead Property and Residential & Non-Residential Property

If HJR 381 or SJR 658 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.

Additional Homestead Exemption for Specified Homestead Owners

If HJR 381 or SJR 658 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:

If HJR 381 or SJR 658 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.

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):²⁴

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

For the January 1, 2012, effective date (HJR 381):²⁵

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

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:²⁶

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):

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

VI. Technical Deficiencies:

The Department of Revenue states that the use of the term “purchasing” may give rise to multiple interpretations of what “purchasing” means which might cause some taxpayers to be excluded from the exemption by such interpretations. For these reasons, the Department recommends deleting the term “purchasing/purchased” and inserting “acquiring/acquired” on the following lines of the bill: line 85, line 103, line 132, line 150.²⁷

²⁴ 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).

²⁵ 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).

²⁶ Revenue Estimating Conference, *Reduction of annual assessment limitation for non-homestead property from 10% to 3%, HJR 381, SJR 658* (March 14, 2011).

²⁷ Florida Department of Revenue, *Fiscal Impact of SB 1722*, 6-7 (March 14, 2011) (on file with the Senate Committee on Community Affairs).

For clarification of the amendment discussed above, the Department recommends inserting the following language on lines 87 and 134 of the bill after the period:

- “For purposes of this section, the date on which the deed or other transfer instrument was signed and notarized or otherwise executed shall be considered the date a property was acquired.”

The Department has also made the following recommendations:

- On lines 102 and 149, insert the following for consistency with ss. 196.031(1)(a) and 193.155(7), F.S., and because the term “homestead’s property just value” is not defined in bill:
 - “Except for owners of an estate held by the entireties or held jointly with the right of survivorship, the amount of the exemption may not exceed the proportionate assessed valuation of all owners who reside on the property.”
- In terms of the Department’s emergency rulemaking authority, add the terms “amended and repealed” on line 179, so that the Department may “renew, amend, and repeal” any emergency rule.
- Property exemptions are applied to the assessed value of the property, which may include any limitations or exemptions to the property’s just value. For these reasons, clarification may be needed on lines 90 and 137 of the bill which states that “the amount [of the additional homestead exemption] shall be equal to 50 percent of the homestead property’s just value on January 1”

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.