

**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: SJR 210

INTRODUCER: Senator Fasano

SUBJECT: Homestead Property Assessed Value

DATE: January 12, 2011

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

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

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**I. Summary:**

This joint resolution proposes an amendment to Article VII, section 4, of the State Constitution, to prohibit increases in the assessed value of homestead property in any year where the market value of the property decreases.

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

**II. Present Situation:**

**Property Valuation**

**A.) Just Value**

Article VII, s. 4, of the State 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>

**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

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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).

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

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.) 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>9</sup>

### **“Save Our Homes” Assessment Limitation**

The “Save Our Homes” provision in article VII, s. 4(d) of the State Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).<sup>10</sup> The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of three percent of last year's assessment or the Consumer Price Index (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.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to article VII, s. 4(d), of the State Constitution, to provide for the portability of the accrued “Save Our Homes” benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to \$500,000 of the “Save Our Homes” accrued benefit to the new homestead.

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<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, ss. 3 and 6.

<sup>10</sup> FLA. CONST. art. VII, s. 4(d).

**Section 193.155, Florida Statutes**

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the “Save Our Homes” amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.<sup>11</sup> Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the “Save Our Homes” provision in section 4(d), Art. VII, State Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from 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.<sup>12</sup>

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

**Rule 12D-8.0062, Florida Administrative Code (F.A.C.): “The Recapture Rule”**

In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C. of the Department of Revenue, entitled “Assessments; Homestead; and Limitations”.<sup>13</sup> The administrative intent of this rule is to govern “the determination of the assessed value of property subject to the homestead assessment limitation under article VII, s. 4(c), Florida Constitution, and s. 193.155, F.S.”<sup>14</sup>

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the “recapture rule”. This provision requires property appraisers to increase the prior year’s assessed value of a homestead property by the lower of three percent or the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the “recapture provision” states:

(5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year’s assessed value ....<sup>15</sup>

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the “Save Our Homes”

<sup>11</sup> See *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (stating 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”).

<sup>12</sup> Section 193.155(1), F.S.

<sup>13</sup> While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. 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 that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

<sup>14</sup> Rule 12D-8.0062(1), F.A.C.

<sup>15</sup> Rule 12D-8.0062(5), F.A.C. (emphasis added)

cap whose property is assessed at less than just value may see an increase in the assessed value of their home during years where the just/market value of their property decreased.<sup>16</sup>

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

### **Markham v. Department of Revenue<sup>17</sup>**

On March 17, 1995, William Markham, a Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious".<sup>18</sup> Markham also claimed that subsection (5) of the rule was at variance with the constitution - specifically that it conflicted with the "intent" of the ballot initiative and that a third limitation relating to market value or movement<sup>19</sup> should be incorporated into the language of the rule to make it compatible with the language in article VII, s. 4(c), of the State Constitution.

A final order was issued by The Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with article VII, s. 4(c), of the State Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.<sup>20</sup>

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.<sup>21</sup>

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

This joint resolution proposes an amendment to Article VII, section 4, of the State Constitution, to prohibit increases in the assessed value of a homestead property in any year where the market value of the property decreases.

The joint resolution also deletes obsolete language in Article VII, section 4(d), of the State Constitution.

If approved by Florida voters, this joint resolution will take effect on January 1, 2013.

<sup>16</sup> *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that "subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").

<sup>20</sup> *Id.* at ¶ 20.

<sup>21</sup> *Id.* at ¶ 22.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Section 1, Art. XI, of the 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, or at a special election held for that purpose.

Section 5(e), Art. XI, of the State 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.

Section 5(d), Art. XI, State 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 \$106.14 for this fiscal year. The division estimates the full publication costs to advertise this constitutional amendment to be \$190,733.58.<sup>22</sup>

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”<sup>23</sup> In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.<sup>24</sup> In these instances, courts have used the rational

<sup>22</sup> Florida Department of State, *Senate Joint Resolution 210 Fiscal Analysis* (Jan. 18, 2011) (on file with the Senate Committee on Community Affairs).

<sup>23</sup> U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

<sup>24</sup> *Reinish v. Clark*, 765 So.2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). *See also Lanning v. Pilcher*, 16 So.3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident’s rights under the Equal Protection Clause). *See also Nordlinger v. Hahn*, 505 U.S. 1 (1992) (stating that the

basis test to determine the constitutionality of discriminatory treatment in property tax assessments.<sup>25</sup> Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.<sup>26</sup>

It has been argued that the recapture rule provided in ss. (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.<sup>27</sup> To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

If approved by the voters, the joint resolution will reduce local revenue as described in “Government Sector Impact”.

### B. Private Sector Impact:

If 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.

### C. Government Sector Impact:

When addressing similar legislation filed last year (2010 SJR 718), the Revenue Estimating Conference determined that the fiscal impact on ad valorem revenues, if the joint resolution was approved by the voters, would have been an \$11 million reduction in 2011-12 and a \$37 million recurring reduction for school purposes, and an \$87 million recurring reduction for all levies.

Section 5(d), Art. XI, State 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

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constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2% per year, was not a violation of the Equal Protection Clause.)

<sup>25</sup> *Nordlinger*, at 33-34, stating that a “classification *rationality* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose”).

<sup>26</sup> *Id.*

<sup>27</sup> Walter Hellerstein et al., Shackelford Professor of Taxation, LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA’S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

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. The division estimates the full publication costs to advertise this constitutional amendment to be \$190,733.58.<sup>28</sup>

If this joint resolution is approved by Florida voters, the Department of Revenue will have a minimal cost associated with amending Rule 12D-8.0062, F.A.C.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

If this joint resolution is approved by Florida voters and enacted into law, similar provisions will likely be proposed for the assessment limitations provided in subsections 4(g) and (h), Art. VII, of the State Constitution.<sup>29</sup>

Section 4(g), Art. VII, of the State Constitution, provides that for all levies other than school levies, the assessed value of residential real property containing nine or fewer units may not be increased annually by more than 10 percent of the assessment in the prior year.

Section 4(h), Art. VII, of the State Constitution, provides that for all levies other than school levies, the assessed value of real property not subject to limitations in other provisions of the constitution may not be increased annually by more than 10 percent of the assessment in the prior year.

**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>28</sup> Florida Department of State, *Senate Joint Resolution 210 Fiscal Analysis* (Jan. 18, 2011) (on file with the Senate Committee on Community Affairs).

<sup>29</sup> Article VII, sections 4(g) and (h), of the Florida Constitution, were created in January 2008, when Florida electors approved Amendment 1 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.