

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/CS/HJR 381 Property Assessment; Homestead Value Decline; Nonhomestead Increase Limitation Reduction; Additional Homestead Exemption

SPONSOR(S): Appropriations Committee, Finance & Tax Committee, Community & Military Affairs Subcommittee, Dorworth and others

TIED BILLS: **IDEN./SIM. BILLS:** SJR 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	19 Y, 3 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee	12 Y, 3 N, As CS	Nelson	Hoagland
3) Finance & Tax Committee	20 Y, 2 N, As CS	Aldridge	Langston
4) Appropriations Committee	23 Y, 0 N, As CS	Voyles	Leznoff

SUMMARY ANALYSIS

Non-Homestead Assessment Limitation

CS/CS/CS/CS/HJR 381 proposes to reduce the annual growth in assessment limitation on certain non-homestead property from 10% to 3% upon voter approval of the amendment.

The January 1, 2019 sunset of the non-homestead assessment limitation is repealed.

Prohibition of Increases in Assessed Value Where Market Value Has Declined

CS/CS/CS/CS/HJR 381 proposes to allow the Legislature by general law to prohibit increases in the assessed value of homestead property and certain non-homestead property in any year where the market value of the property decreases. If created by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of the property decreases.

If approved by the voters with the 2012 presidential preference primary, the above two provisions will take effect on January 1, 2012. If approved by the voters with the 2012 general election, they will take effect on January 1, 2013.

Additional Homestead Exemption for First Time Homesteaders

CS/CS/CS/CS/HJR 381 proposes to allow individuals that are entitled to a homestead exemption under s. 6(a), Art. VII, State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50% of the just value of the homestead property, but not more than \$200,000. The exemption applies only to non-school property taxes. The exemption is reduced each year and diminishes to zero in five years or less. The bill provides for an application process for the exemption and sets forth requirements that must be met in order to retain the exemption upon addition of another person to the title of an affected property.

If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012, and shall be available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, this provision will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

The Revenue Estimating Conference (REC) has estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit and the additional homestead exemption, if effective beginning in 2012, will have a negative revenue impact on non-school property taxes of \$176.6 million in FY 2012-13, growing to \$1,211.9 million by FY 2015-16, **assuming current millage rates**. The REC has estimated that the prohibition of increases in assessments when market value declines, if implementation begins in 2012, will have a negative revenue impact on non-school property taxes of \$16.9 million in FY 2012-13 and \$52.8 million recurring. The negative revenue impact on school property taxes is estimated to be \$10 million in FY 2012-13 and \$27.9 million recurring. See FISCAL IMPACT section for information on implementation in 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/18/2011

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature to be placed on the November 2012 ballot. However, see III. COMMENTS of this analysis for discussion of the need for an earlier election date for the January 1, 2012, effective date of the joint resolution to impact 2012 property taxes.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

Section 4, Art. VII of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer would pay a willing seller for property in an arm's length transaction.¹

Assessed Value

The State Constitution authorizes certain alternatives 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 its character or use.³ Land used for conservation purposes must be assessed solely on the basis of character or use.⁴ Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value be or totally exempted from taxation.⁵ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁶ 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.⁷ 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.⁸ Certain working waterfront property is assessed based upon the property's current use.⁹

Save Our Homes

The "Save Our Homes" provision in s. 4, Art. VII of the State Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of three percent or the inflation rate as measured by the consumer price index.¹⁰ Homestead property owners that establish a new homestead may transfer up to \$500,000 of their accrued "Save Our Homes" benefit to the new homestead.¹¹

Section 193.155, Florida Statutes

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the "Save Our Homes" amendment in s. 193.155, F.S. The legislation required all homestead property to be assessed at just

¹ Section 193.011, F.S. See also, *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

² The constitutional provisions in s. 4, Art. VII of the State Constitution, are implemented in Part II of ch. 193, F.S.

³ Section 4(a), Art. VII of the State Constitution.

⁴ Section 4(b), Art. VII of the State Constitution.

⁵ Section 4(c), Art. VII of the State Constitution.

⁶ Section 4(e), Art. VII of the State Constitution.

⁷ Section 4(f), Art. VII of the State Constitution.

⁸ Section 4(i), Art. VII of the State Constitution.

⁹ Section 4(j), Art. VII of the State Constitution.

¹⁰ Section 4(d), Art. VII of the State Constitution.

¹¹ Section 4(d), Art. VII of the State Constitution.

value by January 1, 1994.¹² 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 constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lesser of 3% or the growth in the CPI. 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, acting as the head of the Department of Revenue, adopted rule 12D-8.0062, F.A.C., entitled “Assessments; Homestead; and Limitations.”¹³ The rule “govern[s] 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.”¹⁴

Subsection (5) of the rule is popularly known as the “recapture rule.” This subsection requires property appraisers to increase the assessed value of a homestead property by the lower of 3% or the CPI on all property where the prior year’s assessed value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., provides:

(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 value¹⁵

Currently, 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” cap whose property is assessed at less than just value may see an increase in the assessed value of their home in years where the just/market value of their property has decreased.

Subsection (6) of the rule 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 Revenue¹⁶

On March 17, 1995, William Markham, the 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”.¹⁷ 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 movement¹⁸ should be incorporated into the language of the rule to make it compatible with the language in section 4(c), Art. VII, State Constitution.

¹² See *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (“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”).

¹³ 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.

¹⁴ Rule 12D-8.0062(1), F.A.C.

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

¹⁶ *Markham v. Dep’t of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995).

¹⁷ *Id.*

¹⁸ *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”).

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 section 4(c), Art. VII, 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.¹⁹

Additional Assessment Limitations

Sections 4(g) and (h), Art. VII of the State Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. 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 is assessed at just value after a change of ownership or control and **must** provide for reassessment following a qualifying improvement, as defined by general law. Section 27, Art. XII of the State 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.

Homestead Exemption

Section 6, Art. VII of the State Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to a homesteads' assessed value between \$50,000 and \$75,000, excluding school district levies.

Other Exemptions

Section 3, Art. VII of the State Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.²⁰ Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.²¹ A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.²² A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.²³ Tangible personal property is exempt up to \$25,000 of its assessed value.²⁴ There is an exemption for real property dedicated in perpetuity for conservation purposes.²⁵ In November 2010, voters approved a constitutional amendment that adds an additional exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.²⁶

¹⁹ *Id.* at ¶ 20.

²⁰ Section 3(a), Art. VII of the State Constitution.

²¹ Section 3(b), Art. VII of the State Constitution.

²² Section 3(c), Art. VII of the State Constitution.

²³ Section 3(d), Art. VII of the State Constitution.

²⁴ Section 3(e), Art. VII of the State Constitution.

²⁵ Section 3(f), Art. VII of the State Constitution.

²⁶ Section 3(g), Art. VII of the State Constitution.

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.

Effect of Proposed Changes

Non-Homestead Assessment Limitation

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII of the State Constitution, to reduce the annual assessment limitation on certain non-homestead property from ten percent to three percent.

Prohibition of Increases in Assessed Value Where Market Value Has Declined

The joint resolution proposes an amendment to s. 4, Art. VII, State Constitution, to allow the Legislature by general law to prohibit increases in the assessed value of a homestead property and certain non-homestead property, in any year where the market value of the property decreases.²⁷

If approved by the voters with the 2012 presidential preference primary, the above two provisions will take effect on January 1, 2012. If approved by the voters with the 2012 general election, these provisions will take effect on January 1, 2013.

Additional Homestead Exemption for First Time Homesteaders

The joint resolution also proposes to create subsection (f) in s. 6, Art. VII of the State Constitution. This amendment allows individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property. The additional exemption will apply to all property taxes other than school district taxes. The amount of the exemption cannot exceed \$200,000. This additional exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the or the difference between just value and assessed value of the property as determined under Florida's "Save Our Homes" provisions.

If approved by the voters with the 2012 presidential preference primary, these provisions will take effect on January 1, 2012, and shall be available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, these provisions will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

Repeal Provisions

The joint resolution 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.^{28,29}

Non-substantive Revisions

The joint resolution also makes non-substantive revisions to s. 4, Art. VII of the State Constitution.

²⁷ The assessed value of a such properties could still increase for unrelated reasons, such as an increase in just value due to improvements made to the homestead property. See Art. VII, section (4)(d)(5), of the State Constitution

²⁸ Section (4)(f), Art. VII, State Constitution, allows a county to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older.

²⁹ Section (4)(f), Art. VII, State Constitution, contains the current 10% annual assessment limitation on residential non-homestead property.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Section 5(d), Art. XI of the 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 10th 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 department estimated the full publication costs for advertising the joint resolution, as amended, to be \$306,107.76.³⁰ Whether this sum is sufficient will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.³¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Implementation in 2012

The Revenue Estimating Conference (REC) has estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit and the additional homestead exemption, if effective beginning in 2012, will have a negative revenue impact on non-school property taxes of \$176.6 million in FY 2012-13, growing to \$1,211.9 million by FY 2015-16, **assuming current millage rates**. The REC has estimated that the prohibition of increases in assessments when market value declines, if effective in 2012, will have a negative revenue impact on non-school property taxes of \$16.9 million in FY 2012-13 and \$52.8 million recurring. The negative revenue impact on school property taxes is estimated to be \$10 million in FY 2012-13 and \$27.9 million recurring

Implementation in 2013

The Revenue Estimating Conference (REC) has estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit, the additional homestead exemption, and the prohibition of assessment increases when market value declines for homestead property, if effective beginning in 2013, will have a negative revenue impact on property taxes of \$301.6 million in FY 2013-14, growing to \$1,127.6 million by FY 2015-16, **assuming current millage rates**. The REC has estimated that the prohibition of increases in assessments when market value declines, if effective in 2013, will have a negative revenue impact on non-school property taxes of \$10.3 million in FY 2013-14 and \$32.5 million recurring. The negative revenue impact on school property taxes is estimated to be \$6.2 million in FY 2013-14 and \$17.7 million recurring.

2. Expenditures:

None.

³⁰ Department of State, *House Joint Resolution 381 (2011) Fiscal Analysis* (March 17, 2011).

³¹ Department of State, *Senate Joint Resolution 1564 (2011) Fiscal Analysis* (March 9, 2011).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings, and will not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10 percent to three percent.

Purchasers of residential properties who have not received a homestead exemption in the past three years will be eligible for an additional homestead exemption for a period of five years.

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 may pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Generally, proposed constitutional amendments are voted on during a general election, unless a special election is scheduled pursuant to law enacted by a three-fourths vote of the membership of each house of the legislature.³² The next general election will be held in November of 2012. However, voter approval of the amendment proposed by this joint resolution in November 2012 would occur too late for the changes proposed by the joint resolution to be effective January 1, 2012, and to affect taxes levied in 2012.³³ Therefore, for the amendment proposed by the joint resolution to be effective January 1, 2012, voter approval would be needed in early 2012.

HB 1053 provides for this measure to be submitted to the electors of this state in a special election to be held on the date of the presidential preference primary. The bill must be passed by the majorities noted above.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 24, 2011, the Finance and Tax Committee adopted a strike-all amendment removing the "Save Our Homes" recapture provisions, and changing the effective date from January 1, 2013, to January 1, 2012. The Committee Substitute does the following:

³² Section 5(a), Art. XI of the State Constitution.

³³ Tax rolls would have been finalized, local government budgets would have been set, tax notices and bills would have been mailed, etc.

- Reduces from 10 percent to three percent the limitation on annual assessment increases applicable to non-homestead property.
- Creates an additional homestead exemption for first-time homesteaders.

The analysis has been updated to reflect the Committee Substitute.

On March 21, 2011, the Community & Military Affairs Subcommittee adopted a strike-all amendment and a technical amendment to the amendment. The strike-all amendment:

- Amends s. 4 of Art. VII to prevent “recapture,” i.e., provides that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1, except for changes, additions, reductions or improvements to homestead property.
- Adds contingency language which provides the additional homestead exemption will apply to property purchased on or after January 1, 2011, if the constitutional amendment is approved at a special election held on the date of the 2012 presidential primary, or on or after January 1, 2012, if approved at the 2012 general election.
- Removes language which created ss. 32 and 33 of Art. XII. Section 32 provided that the reduction on the limit on the maximum annual increase in the assessed value of non-homestead property from 10 percent to three percent takes effect on January 1, 2012. Section 33 related to the effective date of the additional homestead exemption.
- Amends s. 27 of Art. XII of the State Constitution. This language removes language which would have repealed subsections (f) and (g) of Section 4 of Art. VII effective January 1, 2019.
- Removes the proposed ballot language.

On March 30, 2011, the Finance and Tax Committee adopted a strike-all amendment that changed the “recapture” provision in the Joint Resolution to be permissive. The Legislature by general law *may* prohibit increases in the assessed value of a homestead property and certain non-homestead property in any year where the market value of the property decreases.

On April 15, 2011, the Appropriations Committee adopted an amendment that added language to clarify that improvements to non-homestead properties are not included in the non-homestead assessment limitation.

The analysis has been updated to reflect CS/CS/CS/CS HJR 381.