

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SJR 658

INTRODUCER: Senator Fasano

SUBJECT: Homestead/Non-Homestead Property

DATE: March 8, 2011

REVISED: _____

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

I. Summary:

This joint resolution proposes an amendment to sections 4 and 6, Article VII, of the Florida Constitution, and creates sections 32 and 33, Article XII, of the Florida Constitution to prohibit increases in the assessed value of homestead property if the just value of the property decreases and reduces from ten percent to three percent, the limitation on annual assessment increases applicable to non-homestead property. This joint resolution also creates an additional homestead exemption for specified homestead owners.

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

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

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).

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.

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

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).

¹⁰ 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 posed 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:

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

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)).

¹⁴ *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 was “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 terms “new homestead owners” in the title coupled with “first-time homestead” in the summary are 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

“Save Our Homes” Assessment Limitation

The “Save Our Homes” provision in article VII, section 4(d) of the Florida 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).²⁰ 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 the prior year’s assessment, or
 - The percent change in 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, section 4(d), of the Florida 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.

¹⁵ *Id.* at 657 and 660.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Roberts*, at 657 and 660.

¹⁹ *Id.* at 657 and 661.

²⁰ 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, 1994.²¹ 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 Article VII, section 4(d), of the Florida 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.²²

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”.²³ 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, section 4(c), of the Florida Constitution, and s. 193.155, F.S.”²⁴

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 value²⁵

²¹ 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”).

²² Section 193.155(1), F.S.

²³ 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.

²⁴ Rule 12D-8.0062(1), F.A.C.

²⁵ Rule 12D-8.0062(5), F.A.C. (emphasis added).

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” 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.²⁶

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 Revenue²⁷

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”.²⁸ 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 movement²⁹ should be incorporated into the language of the rule to make it compatible with the language in article VII, section 4(c), of the Florida 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, section 4(c), of the Florida 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.³⁰

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.³¹

III. Effect of Proposed Changes:

This joint resolution 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. This joint resolution also amends

²⁶ *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”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *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”).

³⁰ *Id.* at ¶ 20.

³¹ *Id.* at ¶ 22.

Article VII, section 6, of the Florida Constitution, to create an additional homestead exemption for specified homestead owners.

The joint resolution creates sections 32 and 33, Article XII, of the State Constitution, to provide when the amendments prescribed herein shall take effect.

Assessment Limitation on Homestead Property (*Recapture Rule*)

The joint resolution proposes an amendment paragraph 1 of subsection (d) in s. 4, Art. VII, of the Florida Constitution, to provide that an assessment to homestead property may not increase if the just value of the property is less than the just value of the property on the preceding January 1. The joint resolution also deletes obsolete language provided in paragraph 8 of subsection (d) in s. 4, Article VII, of the Florida Constitution.

The joint resolution creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013.

Assessment Limitation on Non-Homestead Property

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII, of the Florida Constitution, to reduce the annual assessment limitation for specified non-homestead property from 10 percent to 3 percent. This assessment limitation is pursuant to general law and subject to the conditions specified in such law.

The joint resolution also creates section 32, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013.

Additional Homestead Exemption for Specified Homestead Owners

The joint resolution proposes to create subsection (f) in s. 6, Art. VII, of the Florida Constitution. 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 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.

The joint resolution also creates section 33, Article XII, of the Florida Constitution, to provide that if approved by Florida voters, this amendment will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

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

The mandate provisions in Article VII, section 18, of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Constitutional Amendments**

Section 1, 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. 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(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.

Section 5(a), Art. XI, of the Florida Constitution, and s. 106.161(1), F.S., require constitutional amendments submitted to the vote of the people to 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, Florida 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.’”³²

³² *Roberts*, at 659, citing *Florida Dep’t of State v. Slough*, 992 So.2d 142, 147 (Fla. 2008).

Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”³³ In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.³⁴ In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.³⁵ 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.³⁶

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.³⁷ 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, this joint resolution 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. This joint resolution will also have an effect on local government revenue.

B. Private Sector Impact:

Assessment Limitation on Homestead Property (*Recapture Rule*)

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.

³³ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

³⁴ *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 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).

³⁵ *Nordlinger*, at 33-34, stating that a “classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose”).

³⁶ *Id.*

³⁷ 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).

Assessment Limitation on Non-Homestead Property

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 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:

Local governments may experience a reduction in the ad valorem tax base if this joint resolution is approved by voters. Since this amendment would require voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 658.

Additional Homestead Exemption for Specified Homestead Owners

Should this amendment be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows: ³⁸

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

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 (2011 SJR 210), 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

³⁹

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

³⁸ Revenue Estimating Conference, *First-Time Homesteaders 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).

³⁹ Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).

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

40

Assessment Limitation on Non-Homestead Property

The Revenue Estimating Conference has not provided a fiscal impact on the constitutional amendment within SJR 658 that reduces from 10 percent to 3 percent, the limitation on annual assessment increases applicable to non-homestead property.

Publication Requirements

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.⁴¹ The division has not estimated the full publication costs to advertise this constitutional amendment at this time.

VI. Technical Deficiencies:

This joint resolution uses the term “fair market value” and “market value” instead of the term “just value”. Although courts have interpreted the term “just value” to be synonymous with “fair market value”,⁴² the Florida Constitution and Florida Statutes currently use the term “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.⁴³ 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.⁴⁴

The Department has also made the following two recommendations:

- Replacing “An increase” on line 49 with “A change”.⁴⁵
- Clarifying on line 58 that the joint resolution has no effect on the assessment of changes, additions, reductions, or improvements to homestead property as provided in (d)(5) of section 4, Article VII, of the Florida Constitution.⁴⁶

⁴⁰ Revenue Estimating Conference, *Recapture SJR 210 & HJR 381* (Feb. 17, 2011).

⁴¹ Florida Department of State, *Senate Joint Resolution 390 Fiscal Analysis* (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

⁴² 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).

⁴³ Florida Department of Revenue, *SJR 658 Fiscal Analysis*, at 3 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).

⁴⁴ *Id.*

⁴⁵ *Id.* at 4-5. The Department states that “the term ‘increase’ in assessed value at subsection d(1)(a) appears to intend that the recapture to assessed value occurs if the percent change in consumer price index is negative. Currently, if the percent change in consumer price index is negative then the assessed value is required to decrease, which may not be a requirement under the bill’s use of the term ‘increase.’”

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁶ *Id.*