

**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 Committee on Finance and Tax

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BILL: SJR 1074

INTRODUCER: Senator Gaetz

SUBJECT: Property Tax Assessments

DATE: January 22, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin	Diez-Arguelles	FT	<b>Pre-meeting</b>
2.			AP	
3.			RC	

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**I. Summary:**

SJR 1074 proposes an amendment to the Florida Constitution to authorize the Legislature to:

- Prohibit increases in assessments of property subject to an assessment limitation when the just value of the property is less than its just value on the preceding January 1.
- Limit increases in assessments of property subject to an assessment limitation to the increase in the percent change in the property's just value.

SJR 1074 will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

If approved by the voters in the general election held November 2016, SJR 1074 will become effective on January 1, 2017.

The Revenue Estimating Conference has analyzed similar legislation (HB 7015 (2016)) and determined that it has no fiscal impact because it must be approved by the voters and it will not become effective until the Legislature implements the joint resolution by general law. If approved by the voters and fully implemented by the Legislature, it would reduce local property taxes in Fiscal Year 2017-2018 by \$152.3 million, with a recurring impact of \$162.2 million. In Fiscal Year 2018-2019, it would reduce local property taxes by \$292.1 million, with a recurring impact of \$162.2 million.

**II. Present Situation:**

**General Overview of Property Taxation in Florida**

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### Property Assessment Limitations

In 1992, Florida voters adopted the “Save Our Homes” amendment to the Florida Constitution, which limits annual increases in the assessed value of homestead property to the lesser of three percent or the percent change in the Consumer Price Index (CPI).<sup>11, 12</sup> The increase in the CPI has often caused the Save Our Homes assessment limitation to be less than 3.0 percent. For example, the increase in the CPI for 2013, 2014 and 2015, was 1.7 percent, 1.5 percent, and 0.8 percent, respectively.<sup>13</sup>

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<sup>1</sup> Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides an exemption. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *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>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

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

<sup>11</sup> FLA. CONST. art. VII, s. 4(d). The specific CPI used is 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> The Save Our Homes assessment limitation was implemented in 1994, and first applied to January 1, 1995 assessments. Chapter 94-353, s. 62, Laws of Fla. (creating s. 193.155, F.S., effective June 3, 1994).

<sup>13</sup> The Department of Revenue maintains a list of historical Save Our Homes limitation percentages, *available at* <http://dor.myflorida.com/dor/property/resources/limitations.html>.

In 2008, the Florida Constitution was amended to allow a homestead owner to transfer the accrued “Save Our Homes” benefit to a new homestead, up to \$500,000.<sup>14</sup>

Also in 2008, the Florida Constitution was amended to limit the annual increase in the assessed value of nonhomestead residential real property and nonresidential real property to 10 percent.<sup>15</sup>

### **The Recapture Rule<sup>16</sup>**

In implementing the Save Our Homes assessment limitation, the Department of Revenue (DOR) promulgated an administrative rule that requires the property appraiser to increase a property’s assessed value in any year that the prior year’s assessed value was less than the current year’s just value.<sup>17, 18</sup> This requirement applies even if the just value of the property has decreased from the prior year. Therefore, homestead owners may see an increase in the assessed value of their homestead in years when the market value of their property decreases.<sup>19</sup> This situation is known as recapture and can occur when the market value of property decreases, remains the same, or even increases, but at a rate that is less than the assessment limitation percentage increase.

On March 17, 1995, William Markham, the Broward County Property Appraiser, challenged the validity of the DOR’s rule, arguing that the rule was “an invalid exercise of delegated legislative authority and [] arbitrary and capricious.”<sup>20</sup> Markham also claimed that 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>21</sup> should be incorporated into the language of the rule. The Division of Administrative Hearings upheld the validity of the DOR’s rule, determining that the language of the rule complied with the constitutional language. 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>22</sup>

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

SJR 1074 proposes an amendment to the Florida Constitution to authorize the Legislature to:

<sup>14</sup> FLA. CONST. art. VII, s. 4(d)(8). The \$500,000 limit is reduced in certain circumstances.

<sup>15</sup> FLA. CONST. art. VII, s. 4(d)(8).

<sup>16</sup> Rule 12D-8.0062, F.A.C.

<sup>17</sup> Rule 12D-8.0062(5), F.A.C.

<sup>18</sup> While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.027, 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>19</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>20</sup> *Id.*

<sup>21</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>22</sup> *Id.* at ¶ 22.

- Prohibit increases in property assessments of property subject to an assessment limitation when the just value of the property is less than its just value on the preceding January 1.
- Limit increases in property assessments of property subject to an assessment limitation to the increase in the percent change in the property's just value.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

The mandate provision 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:

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors 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.'"<sup>23</sup>

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on January 1, 2017.

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

The Revenue Estimating Conference has analyzed similar legislation (HB 7015 (2016)) and determined that it has no fiscal impact because it must be approved by the voters and

<sup>23</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

it will not become effective until the Legislature implements the joint resolution by general law. If approved by the voters and fully implemented by the Legislature, the joint resolution would reduce local property taxes in Fiscal Year 2017-2018 by \$152.3 million, with a recurring impact of \$162.2 million. In Fiscal Year 2018-2019, it would reduce local property taxes by \$292.1 million, with a recurring impact of \$162.2 million.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Article XI, section 5(d) 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 estimates the full publication costs for advertising the proposed amendment to be approximately \$135.97 per word, for a total publishing cost of \$265,413.44.<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This joint resolution substantially amends the following articles of the Florida Constitution: Article VII, section 4; Article XII.

**IX. Additional Information:**

**A. Committee Substitute – Statement of 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>24</sup> Florida Department of State Legislative Bill Analysis of SJR 1074 (2016), Dec. 21, 2015.