

**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 326

INTRODUCER: Senator Brandes

SUBJECT: Homestead Property Tax Assessments/Increased Portability Period

DATE: April 3, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SJR 326 proposes an amendment to the Florida Constitution to extend from 2 to 3 years the “portability” period during which a person may transfer up to \$500,000 of accumulated Save Our Homes benefit from a prior homestead property to a new homestead property.

If adopted by the Legislature, the proposed amendment will be submitted to Florida’s electors for approval or rejection at the next general election in November 2020.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2021.

If the joint resolution is approved by the electors, the Revenue Estimating Conference has determined that local property taxes will be reduced by \$2.1 million beginning in Fiscal Year 2021-2022, with a recurring reduction of \$6.5 million.

## II. Present Situation:

### General Overview of Property Taxation

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

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<sup>1</sup> Both real property and tangible personal property are 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 otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing

within the taxing authority and then applies relevant 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>

### **Save Our Homes Assessment Limitation and Portability**

In 1992, Florida voters approved the Save Our Homes amendment to the Florida Constitution.<sup>11</sup> The Save Our Homes amendment limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index.<sup>12</sup> The accumulated difference between the assessed value and the just value is the Save Our Homes benefit. The assessed value may increase even if the value of the home decreases; however, the assessed value of a homestead property will never be more than the just value.

In 2008, Florida voters further amended the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation.<sup>13</sup> The portability amendment allows homestead property owners who relocate to a new homestead to transfer, or "port," up to \$500,000 of the accrued Save Our Homes benefit to the new homestead. To transfer the Save Our Homes benefit, the homestead owner must establish a new homestead within 2

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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 Florida Legislature implemented the Saves Our Homes amendment in s. 193.155, F.S.

<sup>12</sup> FLA. CONST. art. VII, s. 4(d).

<sup>13</sup> FLA. CONST. art VII, s. (4)(d)(8). The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155(8), F.S.

years of January 1 of the year he or she abandoned the old homestead (not 2 years after the sale).<sup>14</sup>

### III. Effect of Proposed Changes:

The joint resolution proposes an amendment to the Florida Constitution to extend from 2 to 3 years the “portability” period during which a person has the ability to transfer up to \$500,000 of accumulated Save our Homes benefit from a prior homestead property to a new homestead property.

If adopted by the Legislature, the proposed amendment will be submitted to Florida’s electors for approval or rejection at the next general election in November 2020.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2021.

### IV. Constitutional Issues:

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

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

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

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. 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. Article XI, Section 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election<sup>15</sup> 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. Section 101.161(1), F.S., requires

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<sup>14</sup> See Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure *available at* <http://floridarevenue.com/property/Documents/pt112.pdf> (last visited Mar. 24, 2019).

<sup>15</sup> Section 97.012(16), F.S., defines “general election” as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

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>16</sup>

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 10th week and again in the 6th week immediately preceding the week the election is held.

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 the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

## **V. Fiscal Impact Statement:**

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

If the joint resolution is not approved by the electors, the fiscal impact is zero. If the joint resolution is approved, the Revenue Estimating Conference has determined that the joint resolution will reduce local property taxes by \$2.1 million, beginning in Fiscal Year 2021–2022, with a recurring reduction of \$6.5 million. The fiscal impact includes a \$0.8 million reduction in school taxes, beginning in Fiscal Year 2021–2022, with a \$2.4 million recurring school tax reduction.

### **B. Private Sector Impact:**

If the proposed amendment is approved by a 60 percent vote of the electors, homeowners will have an additional year to transfer their existing homestead Save Our Homes benefit to a new homestead property.

### **C. Government Sector Impact:**

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. According to the Division, the cost to advertise constitutional amendments for the 2018 primary and general election cycle was \$92.93 per word.

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<sup>16</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).

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue would need to amend Forms DR-490PORT, DR-501, and DR-501RVSH; and Rules 12D-8.0065(2)(a) and 12D-16.002, F.A.C. However, the department will implement those changes with existing fiscal resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This joint resolution substantially amends Article VII, section 4 of the Florida Constitution and creates a new section in Article XII of the Florida Constitution.

**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.