

**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 Community Affairs

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BILL: SJR 146

INTRODUCER: Senator Brandes

SUBJECT: Homestead Property Tax Assessments/Increased Portability Period

DATE: October 29, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

**I. Summary:**

SJR 146 proposes an amendment to the Florida Constitution to extend from two to three 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.

**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 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.

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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 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.

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 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 two to three years the "portability" period during which a person has the ability to transfer up to

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<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.

<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 Oct. 25, 2019).

\$500,000 of accumulated Save our Homes benefit from a prior homestead property to a new homestead property. The resolution also deletes obsolete provisions pertaining to 2008 homestead property assessments.

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 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>

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<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.

<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).

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:

As of this date, the Revenue Estimating Conference (REC) has not met to consider the proposed fiscal impact of SJR 146. During the 2019 Legislative Session, the REC determined that a similar joint resolution on Save Our Homes portability timeframes, SJR 326, would have a zero/negative indeterminate impact because of the need for voter approval.<sup>17</sup> If the constitutional amendment did not pass, the impact would be zero. However, if approved, the REC determined that SJR 326 (2019) would 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 included a \$0.8 million reduction in school taxes, beginning in Fiscal Year 2021–2022, with a \$2.4 million recurring reduction.

### B. Private Sector Impact:

If the proposed amendment, SJR 146, 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:

If the proposed amendment, SJR 146, is approved by a 60 percent vote of the electors, local governments may receive less ad valorem tax revenue.

The Division of Elections (Division) is required to advertise the full text of proposed constitutional amendments in English and Spanish<sup>18</sup> 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 English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to

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<sup>17</sup> Office of Economic and Demographic Research, The Florida Legislature, *SOH Portability Timeframes: SJR 326* (Jan. 24, 2019), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/pdf/page20-22.pdf> (last visited Oct. 25, 2019).

<sup>18</sup> The requirement to provide these publications in Spanish stems from Section 203 of the Federal Voting Rights Act.

advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.<sup>19</sup>

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be, at a minimum, \$63,378.26.<sup>20</sup> Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.<sup>21</sup>

According to the Florida Department of Revenue (DOR), if SJR 146 and the implementing language in SB 148 are approved, DOR would need to amend Forms DR-490PORT, DR-501, and DR-501RVSH, and amend Rules 12D-8.0065(2)(a) and 12D-16.002, F.A.C.<sup>22</sup>

**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.

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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>19</sup> E-mail from Brittany N. Dover, Legislative Affairs Director, Florida Department of State (Oct. 2, 2019) (on file with the Senate Committee on Community Affairs).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Florida Department of Revenue, *SJR 146 Agency Analysis* (Oct. 13, 2019) (on file with the Senate Committee on Community Affairs).