

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 Committee on Appropriations

BILL: CS/CS/CS/SB 1186

INTRODUCER: Appropriations Committee; Finance and Tax Committee; Community Affairs Committee; and Senator Brandes

SUBJECT: Property Assessments for Elevated Properties

DATE: April 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Gross</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1186 is the implementing bill for SJR 1182, which proposes an amendment to the Florida Constitution to authorize the Legislature to prohibit an increase in the assessed value of residential property as a result of any change or improvement made to improve the property's resistance to flood damage.

The bill provides that the assessed value of residential property may not increase if the property is voluntarily elevated to meet National Flood Insurance Program and Florida Building Code elevation requirements. Such property, at the time of elevation, may not have been deemed uninhabitable, and it cannot be subject to any unpaid property taxes, special assessments, county or municipal utility charges, or other government-imposed liens. Additionally, the assessment limitation will not apply to the property if, after voluntary elevation, the property classification changes.

The Revenue Estimating Conference has not analyzed the bill. However, the amendments incorporated into the current version of the bill are unlikely to significantly change the impact. The prior version of the bill was estimated to reduce local government revenues by \$5.8 million beginning in Fiscal Year 2023-2024, with a \$25.1 million recurring reduction.

The bill will take effect on the effective date of the amendment proposed by SJR 1182 or a similar joint resolution having substantially the same specific intent and purpose. If approved by

the electors, the proposed amendment (SJR 1182) and CS/CS/SB 1186 will take effect on January 1, 2023.

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.¹ The property appraiser annually determines the “just value”² of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ 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 on real estate or tangible personal property,⁴ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵ For example, the Legislature may prohibit from increasing the assessed value of residential property those improvements made to enhance the property’s resistance to wind damage or installations of solar or renewable energy source devices.⁶ Currently, the Legislature has implemented the assessment limitation for the installation of renewable energy source devices.⁷

Changes, Additions, and Improvements to Real Property

In general, changes, additions, or improvements to real property are assessed at just value as of the first January 1 after they are substantially completed.⁸ However, when property is damaged or destroyed by calamity or misfortune, the property may be repaired or replaced without the change, addition, or improvement being assessed at just value; rather, the change, addition, or improvement is assigned the taxable value and other tax characteristics (i.e. assessment limitation) that the damaged or replaced property had before being damaged or destroyed. This treatment has certain limitations. For instance, the change, addition, or improvement may not exceed 110 percent of the square footage of the property before it was damaged or destroyed.⁹ Any square footage greater than 110 percent of the replaced property is assessed at just value.

¹ 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.

² 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).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ FLA. CONST. art. VII, s. 4(i).

⁷ Section 193.624, F.S.

⁸ Sections 193.155(4)(a), 193.1554(6)(a), and 193.1555(6)(a), F.S.

⁹ Sections 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S.

For residential property, the 110 percent limitation does not apply if the change, addition, or improvement is made to property that is no larger than 1,500 square feet after it is repaired or replaced.¹⁰

Rebuilding of damaged property must commence within 3 years of the damage (or 5 years for damage caused by Hurricane Michael) to qualify for the assessment limitation described above.

Resistance to Flood Damage

Hurricanes and severe storms cause flooding throughout Florida and sea-level rise may increase the potency of flood damage over time.¹¹ As of 2019, Florida held over one-third of the flood insurance policies issued by the National Flood Insurance Program (NFIP), a federal entity created in 1968 to provide standardized flood insurance.¹² According to the Federal Emergency Management Agency (FEMA), 1,719,376 properties in Florida are at risk of flooding in a 100-year storm.¹³

Flood damage can be mitigated via multiple strategies. These might include large structural mitigation public works projects, such as dams, seawalls, levees.¹⁴ Mitigation can also include improvements made to individual properties, such as elevating structures, filling basements, and waterproofing.¹⁵ They might also include non-structural mitigation as well, such as maintaining land to allow for storm water runoff, waterproofing basements, installing check valves capable of preventing water backup, and elevating furnaces, heaters, and electrical panels.¹⁶

Voluntary Property Elevation

Surveyors and architects use Flood Insurance Rate Maps, maps produced by FEMA which delineate base flood elevations,¹⁷ to determine minimum building height. Buildings constructed before a community was under elevation regulations or before FEMA produced the area's first flood map may now be considered below safe elevation, and at high risk for flood damage.

Buildings may be raised after construction either by lifting an existing house and constructing a new foundation below, or by leaving the house in place and building an elevated floor within the

¹⁰ Sections 193.155(4)(b), F.S.

¹¹ Rebecca Lindsey, *Climate Change: Global Sea Level*, National Oceanic and Atmospheric Administration, (Jan. 25, 2021), available at: <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level> (last visited April 8, 2021).

¹² *Facts + Statistics: Flood Insurance*, Insurance Information Institute, available at: <https://www.iii.org/fact-statistic/facts-statistics-flood-insurance> (last visited April 8, 2021).

¹³ Emily Mahoney and Zachary Sampson, *Florida has thousands more properties with high flood risk than FEMA says, according to new study*, Tampa Bay Times, (Jun. 29, 2020) available at: <https://www.tampabay.com/news/environment/2020/06/29/florida-has-thousands-more-properties-with-high-flood-risk-than-fema-says-according-to-new-study/> (last visited April 9, 2021).

¹⁴ Beverly Cigler, *U.S. Floods: The Necessity of Mitigation*, State and Local Government Review, Volume 49 Issue 2, (Sept. 22, 2017), available at: https://www.napawash.org/uploads/Standing_Panel_Blogs/cigler-floods-and-mitigation-Sept.-20172.pdf (last visited April 9, 2021).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The “base flood elevation” is the elevation of surface water resulting from a flood that has a 1 percent chance of happening annually. See *Base Flood Elevation (BFE)*, FEMA, (Mar. 5, 2020), available at: <https://www.fema.gov/node/404233> (last visited April 8, 2021).

house or adding an upper story.¹⁸ When a house is lifted, its new foundation may be made of continuous walls, or columns or pilings which would allow access to the area below the newly elevated house.¹⁹

NFIP Elevation Certificate

An NFIP Elevation Certificate is a form produced by FEMA used to provide information which can ensure compliance with community floodplain ordinances, determine a property's insurance rate, and be used as evidence to have a FEMA flood plain map altered.²⁰ An elevation certificate must in most cases be completed by a licensed land surveyor, engineer, architect, or designated local official.²¹ The completed document includes location and elevation data from the property, the corresponding Flood Insurance Rate Map, community information, and photographic proof elevation certificates that are typically required when new construction or substantial improvements occur on a property resting at least in part or below a limit set by local authorities. Nationwide, the average cost for having an elevation certificate completed is on average \$600.²²

Florida Building Code Elevation Requirements

The Florida Building Code requires the construction or reconstruction of residential properties follow specific guidelines to mitigate potential damage that might be caused by flood waters in areas designated as "flood hazard areas" and "coastal high-hazard areas." For example, buildings in flood hazard areas must have their lowest floors elevated above the base flood elevation plus one foot, or the design flood elevation, whichever is higher.²³

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 193.155 and 193.1554, F.S., respectively, to provide that the assessed value of a residential property may not increase if the property is voluntarily elevated to meet NFIP and Florida Building Code elevation requirements and the square footage of the property, as improved, does not exceed 110 percent of the original square footage.

The area below an elevated structure that is created as a result of elevating the property may not be included in the property's 110 percent calculation when it is solely designated for parking, storage, or access and does not exceed 110 percent of the original property's square footage.

In addition, the assessed value may not increase if the total square footage of the property as elevated does not exceed 1,500 square feet.

The portions of property in excess of these limits are subject to assessment at just value.

¹⁸ Chapter 5: *Elevating Your House*, Homeowner's Guide to Retrofitting, FEMA, available at: <https://www.fema.gov/pdf/rebuild/mat/sec5.pdf> (last visited April 8, 2021).

¹⁹ *Id.*

²⁰ *Elevation Certificate and Instructions*, FEMA National Flood Insurance Program, available at: https://www.pinellascounty.org/drs/PDF/FEMA_Elevation_Certificate_086-0-33.pdf (last visited April 8, 2021).

²¹ *Id.*

²² Josh Price, *What Does an Elevation Certificate Cost?*, MassiveCert.com, available at: <https://www.massivecert.com/blog/what-does-elevation-certificate-cost> (last visited April 8, 2021).

²³ International Code Council, Inc., *2020 Florida Building Code, Residential, 7th Edition*, (July 2020), Section 322.2.1, available at: https://floridabuilding.org/bc/bc_default.aspx (last visited April 8, 2021).

To qualify for this assessment limitation, the owner must provide the property appraiser with elevation certificates for both the original and elevated property.

In addition, the property may not have been deemed uninhabitable, and it may not be subject to unpaid property tax assessments, special assessments, county or municipal utility charges, or other government-imposed liens at the time of elevation.

The assessment limitation will not apply to the property if, after voluntary elevation, the property classification changes. For example, a classification change from single family residential to multifamily residential.

The bill defines “voluntary elevation” to mean the elevation of an existing nonconforming property or the removal and rebuilding of a nonconforming property.

Section 3 provides that the bill takes effect on the effective date of SJR 1182 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the Florida Constitution is approved at the general election²⁴ held in November 2022, or at an earlier special election specifically authorized by law for that purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{25, 26} which for Fiscal Year 2021-2022 is forecast at approximately \$2.2 million.²⁷

Staff estimates that the bill will reduce local government revenues by an amount in excess of \$2.2 million beginning in Fiscal Year 2023-2024. Therefore, this bill may be a mandate subject to the requirements of Art. VII, s. 18(b) of the Florida Constitution. *See* Section V. Fiscal Impact Statement.

²⁴ Section 97.021(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.

²⁵ FLA. CONST. art. VII, s. 18(d).

²⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 03, 2021).

²⁷ Based on the Demographic Estimating Conference’s April 1, 2021, estimated population adopted on Nov. 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 03, 2021).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not analyzed the bill. However, the amendments incorporated into the current version of the bill are unlikely to significantly change the impact. The prior version of the bill was estimated to reduce local government revenues by \$5.8 million beginning in Fiscal Year 2023-2024, with a \$25.1 million recurring reduction.²⁸

B. Private Sector Impact:

If the proposed amendment (SJR 1182) is approved by 60 percent of voters in November 2022, homeowners will be able to voluntarily elevate their residential property without increasing the property's assessed value.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ Revenue Estimating Impact Conference, *Elevated Properties, CS/HB 1379*, (April 10, 2021), available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page365-376.pdf (last visited April 9, 2021).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.155 and 193.1554.

This bill reenacts section 193.1557 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Appropriations on April 21, 2021:**

The committee substitute:

- Provides that the property must not have been deemed uninhabitable at the time of voluntary elevation.
- Provides that all property taxes, special assessments, county or municipal utility charges, and other government-imposed liens must be paid at the time of voluntary elevation.
- Provides that the assessment limitation granted by the bill will not apply to the property if, after the voluntary elevation, there is a change in the classification of the property.
- Clarifies that the area beneath an elevated property in excess of 110 percent of the property's square footage as it existed before elevation is subject to tax at just value.

CS/CS by Finance and Tax on April 14, 2021:

The committee substitute:

- Removes the requirement that changes, additions, or improvements commence within 3 years of a voluntary elevation. This is a technical amendment needed because the new provisions of the bill are being inserted into a statute that currently applies to damaged property. Under current law, the repairs of damaged property must commence within 3 years of the damage (or 5 years for damage caused by Hurricane Michael). This "3-year" provision was inadvertently made applicable to voluntary elevations, but the intent of the bill is that those improvements can begin at any time.
- Makes conforming changes to the 5-year provision for damage caused by Hurricane Michael.

CS by Community Affairs on March 10, 2021:

The committee substitute inserts the bill number for the senate joint resolution to which this bill is linked.

B. Amendments:

None.