

**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: CS/SB 1186

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Property Assessments for Elevated Properties

DATE: March 10, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	<b>Fav/CS</b>
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

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

The bill provides that the voluntary elevation of residential property to bring the property into compliance with National Flood Insurance Program requirements and Florida Building Code elevation requirements shall not increase the property's assessed value under certain circumstances. The bill applies to both homestead and nonhomestead residential property and allows for the elevation of existing nonconforming property or the removal and rebuilding of nonconforming property.

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 in the next general election in November 2022, the proposed amendment (SJR 1128) and SB 1186 will take effect on January 1, 2023.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of the bill.

## 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.

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

One way the Florida Constitution specifically authorizes the Legislature to provide for property valuations at less than just value is by specifying certain improvements that cannot be considered in evaluating a property’s assessed value. Currently the improvements under this provision are those made to improve a residential property’s resistance to wind damage, and any installation of solar or renewable energy devices.<sup>6</sup>

### Changes, Additions, and Improvements to Real Property

A homestead property’s tax assessment cannot be increased in one year by more than the greater of 3 percent or the percent change in the Consumer Price Index, except for under certain circumstances.<sup>7</sup> One such exception is that changes, additions, and improvements to homestead property are assessed at market value, which can increase the total assessment by any amount.<sup>8</sup>

However, those changes, additions, and improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the homestead property’s assessed value as long as the new property’s square footage does not exceed 110 percent of the property before the change.<sup>9</sup> Additionally, the homestead property’s assessed value may not

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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.

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

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

<sup>6</sup> FLA. CONST. art. VII, s. 4(i).

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

<sup>8</sup> Section 193.155(4)(a), F.S.

<sup>9</sup> Section 193.155(4)(b), F.S.

increase if the total square footage of the property as changed does not exceed 1,500 feet.<sup>10</sup> After a change, addition, or improvement that results in property more than 110 percent of its previous square footage or more than 1,500 feet, the assessed value is required to be increased by the value of that portion in excess of 110 percent of the previous area or 1,500 feet.<sup>11</sup>

This statutory provision also applies to non-homestead property if, during the year when the damage or destruction took place, the owner applies for and is granted a homestead exemption.<sup>12</sup> These provisions apply as long as the changes, additions or improvements are commenced within three years after the January 1 following the damage or destruction of the homestead.<sup>13</sup> When property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.<sup>14</sup>

### ***Nonhomestead Residential Property***

The assessment on nonhomestead residential property cannot increase by more than 10 percent each year, except for in the same circumstances as provided for homestead property.<sup>15</sup> The same provisions discussed above with respect to changes, additions, and improvements which replace damaged or destroyed property also apply to nonhomestead property.<sup>16</sup> “Nonhomestead residential property” means residential real property containing nine or fewer dwelling units, including vacant property zoned and platted for residential use, that does not receive the homestead exemption.<sup>17</sup>

### ***Property Damaged or Destroyed by Hurricane Michael***

Section 193.1557, F.S., provides that rather than the standard three year limitation, property damaged or destroyed by Hurricane Michael may be changed, added to, or improved commencing up to five years after January 1, 2019. Hurricane Michael was a category 5 hurricane which struck Florida in October 2018, causing \$18.4 billion of damage in the state.

### **Resistance to Flood Damage**

Hurricanes and severe storms cause flooding throughout Florida routinely, and sea-level rise may increase the potency of flood damage over time.<sup>18</sup> Florida holds nearly one-third of flood insurance policies issued by the National Flood Insurance Program (NFIP), a federal entity created in 1968 to provide standardized flood insurance.<sup>19</sup> According to the Federal Emergency

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Section 193.155(4)(c), F.S.

<sup>13</sup> Fla. Admin. Code R. 12D-8.0063(3).

<sup>14</sup> Section 193.155(5), F.S.

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

<sup>16</sup> Section 193.1554(6), F.S.

<sup>17</sup> Section 193.1554(1), F.S.

<sup>18</sup> 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 March 8, 2021).

<sup>19</sup> *Facts + Statistics: Flood Insurance*, Insurance Information Institute, available at: <https://www.iii.org/fact-statistic/facts-statistics-flood-insurance> (last accessed March 5, 2021).

Management Agency (FEMA), 1,719,376 properties in Florida are at risk of flooding in a 100-year storm.<sup>20</sup>

Flood damage can be resisted via multiple strategies. These might include large structural mitigation public works projects, such as dams, seawalls, levees.<sup>21</sup> Mitigation can also include improvements made to individual properties, such as by elevating structures, filling basements, and waterproofing.<sup>22</sup> They might also include non-structural mitigation as well, such as maintaining land to allow for stormwater runoff, waterproofing basements, installing check valves capable of preventing water backup, and elevating furnaces, heaters, and electrical panels.<sup>23</sup>

### ***Voluntary Property Elevation***

In general, residential buildings cannot simply be waterproofed in flood-prone areas; they must be elevated above the level required by the NFIP or Florida Building Code.<sup>24</sup> Surveyors and architects use Flood Insurance Rate Maps, maps produced by FEMA which delineate base flood elevations,<sup>25</sup> 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 producing new foundation below it, or by leaving the house in place and building an elevated floor within the house or adding an upper story.<sup>26</sup> When a house is lifted up, 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.<sup>27</sup>

### ***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

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<sup>20</sup> 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/>). A "100-year storm" refers to rainfall totals that have a one percent probability of occurring at that location in that year.

<sup>21</sup> *U.S. Floods: The Necessity of Mitigation*, Beverly Cigler, 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](https://www.napawash.org/uploads/Standing_Panel_Blogs/cigler-floods-and-mitigation-Sept-20172.pdf) (last accessed March 4, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings*, FEMA, p. 1, (Jan. 2021), available at: [https://www.fema.gov/sites/default/files/documents/fema\\_technical-bulletin-3\\_1-2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_technical-bulletin-3_1-2021.pdf) (last accessed March 5, 2021).

<sup>25</sup> 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, available at: <https://www.fema.gov/node/404233> (last accessed March 5, 2020).

<sup>26</sup> *Chapter 5: Elevating Your House*, Homeowner's Guide to Retrofitting, FEMA, available at: <https://www.fema.gov/pdf/rebuild/mat/sec5.pdf> (last accessed March 5, 2020).

<sup>27</sup> *Id.*

rate, and be used as evidence to have a FEMA flood plain map altered.<sup>28</sup> An elevation certificate must in most cases be completed by a licensed land surveyor, engineer, architect, or designated local official.<sup>29</sup> The completed document includes location and elevation data from the property, the corresponding Flood Insurance Rate Map, community information, and photographic proof elevation certificates are typically required when new construction or substantial improvements occur on a property resting at least in part below a limit set by local authorities.<sup>30</sup> Nationwide, the average cost for having an elevation certificate completed is roughly \$600.<sup>31</sup>

### *Florida Building Code Elevation Requirements*

The Florida Building Code provides requirements that meet or exceed NFIP requirements.<sup>32</sup> The Florida Building Code provides that buildings and structures in flood hazard areas must have their lowest floors elevated to or above the base flood elevation plus one foot, or the design flood elevation, whichever is higher.<sup>33</sup> Basement floors are included unless such areas are designed and used only for parking, access, and storage, and certain other requirements are met.<sup>34</sup> The Florida Building Code further provides stricter requirements for buildings and structures in coastal high-hazard areas.<sup>35</sup>

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

**Section 1** amends s. 193.155, F.S., to provide that the assessed value of a residential homestead property that is voluntarily elevated to meet NFIP and Florida Building Code elevation requirements may not increase if:

- The property, prior to elevation, was out of compliance with NFIP and Florida Building Code elevation requirements; and
- The square footage of the property after elevation does not exceed 110 percent of the property's prior square footage, or if the total square footage after elevation does not exceed 1,500 feet.

Areas below an elevated structure designed only for parking, storage, or access may not be included in the elevated property's area unless such area designed for parking, storage, or access by itself exceeds 110 percent of the original property's square footage.

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

<sup>28</sup> *Elevation Certificate and Instructions*, FEMA National Flood Insurance Program, available at: [https://www.pinellascounty.org/drs/PDF/FEMA\\_Elevation\\_Certificate\\_086-0-33.pdf](https://www.pinellascounty.org/drs/PDF/FEMA_Elevation_Certificate_086-0-33.pdf) (last accessed March 5, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> For example, within Leon County any construction on property resting less than 3 feet above the base flood elevation requires an elevation certificate. See Leon County Flood Protection, available at: <http://www.leoncountyfl.gov/floodprotection/certificates.asp> (last accessed March 5, 2020).

<sup>31</sup> Josh Price, *What Does an Elevation Certificate Cost?*, MassiveCert.com, available at: <https://www.massivecert.com/blog/what-does-elevation-certificate-cost> (last accessed March 5, 2020).

<sup>32</sup> *Floodplan Management in Florida Quick Guide*, Florida Division of Emergency Management Bureau of Mitigation, 2017, available at: <https://www.floridadisaster.org/contentassets/5a671dfdfadf45ab9a2c61635e2a4fed/quick-guide-for-floodplain-management.pdf> (last accessed March 5, 2020).

<sup>33</sup> Florida Building Code R322.2.1.

<sup>34</sup> Florida Building Code R322.2.2.

<sup>35</sup> See Florida Building Code R322.3.

“Voluntary elevation” means the elevation of an existing nonconforming property or the removal and rebuilding of a nonconforming property.

If a voluntary elevation results in the property exceeding more than 110 percent of its previous square footage, the assessed value must be increased by the value of that portion in excess of 110 percent the previous area.

**Section 2** amends s. 193.1554, F.S., to apply the same assessment limitations to residential nonhomestead properties that are voluntarily elevated to meet NFIP and Florida Building Code elevation requirements.

**Section 3** reenacts s. 193.1557, F.S., relating to property damaged or destroyed by Hurricane Michael, to incorporate the provisions of sections 1 and 2 of the bill.

**Section 4** 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 election<sup>36</sup> 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.<sup>37, 38</sup>

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill reduces local governments’ authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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<sup>36</sup> 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.

<sup>37</sup> FLA. CONST. art. VII, s. 18(d).

<sup>38</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. The Florida Demographic Estimating Conference adopted estimations that the 2021 population will be 21,893,919, which makes the threshold for insignificant fiscal impact \$2.19 million. Executive Summary, Demographic Estimating Conference, Nov. 13, 2020, *available at* <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 8, 2021).

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

The Revenue Estimating Conference has not yet evaluated the fiscal impact of this bill.

**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 raising the property's assessed value. This will result in an indeterminate positive fiscal impact as homeowners take advantage of ad valorem tax savings.

**C. Government 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 raising the property's assessed value. This will result in an indeterminate negative fiscal impact on local governments as homeowners may be subject to ad valorem taxes at less than just value after voluntary elevation of their homes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that before voluntary elevation a property must have been out of compliance with "the Federal Emergency Management Agency's National Flood Insurance Program requirements *and* Florida Building Code elevation requirements..." (Lines 121-123) (emphasis added). In order to encourage voluntary elevation of properties out of compliance with only one of those two sets of requirements, the sponsor may consider replacing the "and" with "or."

**VIII. Statutes Affected:**

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

This bill reenacts section 193.1557 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**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.