

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1379 Property Assessments for Elevated Properties

SPONSOR(S): State Affairs Committee, Environment, Agriculture & Flooding Subcommittee, Chaney, Aloupis and others

TIED BILLS: HJR 1377 **IDEN./SIM. BILLS:** CS/CS/SB 1186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N, As CS	Melkun	Moore
2) Ways & Means Committee	15 Y, 0 N	Curry	Aldridge
3) State Affairs Committee	21 Y, 0 N, As CS	Melkun	Williamson

SUMMARY ANALYSIS

Local governments impose and collect ad valorem taxes on real and tangible personal property within Florida. All property in Florida is subject to taxation and must be assessed at just value unless the Florida Constitution authorizes an exemption or exception. Under the homestead exemption, persons with legal and equitable title in real property on which they or their dependent permanently reside may have a portion of the just value of their property exempted from taxation.

The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program, which was created to offer federally subsidized flood insurance to property owners and to encourage land-use controls in floodplains. Once an owner or developer makes a decision to construct, add to or substantially improve a building in a flood hazard area, certain requirements intended to minimize future flood damage must be satisfied.

House Joint Resolution 1377 (2021), to which this bill is tied, proposes an amendment to Article VII, section 4(i) of the Florida Constitution to authorize the Legislature to prohibit the consideration of any change or improvement to real property used for residential purposes made to improve the property's resistance to flood damage.

The bill specifies that changes, additions, or improvements that replace all or a portion of a homestead or nonhomestead residential property for the purpose of voluntarily elevating the property do not increase the property's assessed value if:

- The square footage of the property after the voluntary elevation does not exceed 1,500 square feet or does not exceed 110 percent of the square footage of the property before the elevation; and
- At the time the voluntary elevation commenced, the property was not deemed uninhabitable under state or local law; all ad valorem taxes, special assessments, utility charges, and other government-imposed liens against the property had been paid; and the property did not comply with FEMA's National Flood Insurance Program requirements and Florida Building Code elevation requirements and was elevated in compliance with such requirements.

The Revenue Estimating Conference has estimated that the revenue impact of the bill on local governments is zero/negative indeterminate because the bill is contingent upon passage of the constitutional amendment proposed by HJR 1377. See Fiscal Analysis.

The bill takes effect on the same date that HJR 1377, or a similar joint resolution, is approved by the electors at the general election held in November 2022 or at an earlier special election specifically authorized for that purpose. If approved by the voters, the joint resolution and this bill will take effect on January 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Property Taxes

The Florida Constitution reserves ad valorem taxation on real and tangible personal property to local governments and prohibits the state from levying ad valorem taxes on such property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires all property to be assessed at just value for ad valorem tax purposes³ and provides for specified assessment limitations, property classifications, and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Property Tax Exemptions

Unless expressly exempted from taxation, all real and personal property and leasehold interests in the state are subject to taxation.⁶ The Florida Constitution limits the Legislature's authority to grant an exemption from taxes⁷ and any modifications to existing ad valorem tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁸

Changes, Additions, or Improvements to Real Property

A homestead⁹ property's tax assessment cannot be increased in one year by more than the greater of three percent or the percent change in the Consumer Price Index, except under certain circumstances.¹⁰ Similarly, a nonhomestead residential property's tax assessment cannot increase by more than 10 percent each year, except that the same exceptions that apply to homestead properties also apply to nonhomestead residential properties.¹¹ One such exception is that changes, additions, and improvements to homestead or nonhomestead residential property are assessed at market value, which can increase the total assessment by any amount.¹²

¹ Art. VII, s. 1(a), Fla. Const.

² Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Art. VII, s. 4, Fla. Const.

⁴ Art. VII, ss. 3, 4, and 6, Fla. Const.

⁵ Section 196.031, F.S.

⁶ Section 196.001, F.S.; *see also Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994), noting exemptions are strictly construed against the party claiming them.

⁷ *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978).

⁸ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp v. Kinney*, 360 So. 2d 415 (Fla. 1978). *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

⁹ The term "homestead" means a property held by every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, that is exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of \$25,000 and, for all levies other than school district levies, on the assessed valuation greater than \$50,000 and up to \$75,000, upon establishment of right thereto in the manner prescribed by law. Art. VII, s. 6(a), Fla. Const.; s. 192.001(8), F.S.

¹⁰ Art. VII, s. 4(d), Fla. Const.

¹¹ Art. VII, s. 4(h), Fla. Const.

¹² Sections 193.155(4)(a) and 193.1554(6)(a), F.S.

However, current law specifies that changes, additions, or improvements that replace all or a portion of homestead or nonhomestead residential property¹³ damaged or destroyed by misfortune or calamity may not increase the property's assessed value when the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction.¹⁴ Additionally, the property's assessed value may not increase if the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet.¹⁵

Building Elevation Requirements

Hurricanes and other storms that result in flooding have caused billions of dollars in damage across all parts of Florida. Local jurisdictions throughout the state recognize, plan for, and manage development in flood hazard areas. The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program, which was created to offer federally subsidized flood insurance to property owners and to encourage land-use controls in floodplains.¹⁶ Communities eligible to participate in the National Flood Insurance Program Community Rating System receive discounts on flood insurance premiums.¹⁷ To participate in the National Flood Insurance Program, communities agree to regulate all development in flood hazard areas mapped by FEMA.¹⁸

A Flood Insurance Rate Map is an official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.¹⁹ These maps have many applications relevant to resilience planning, including communicating base flood elevations and flood risk, establishing special flood hazard areas where flood insurance is required, and setting local floodplain and building standards.²⁰

When an owner or developer constructs, adds to, or substantially improves a building in a flood hazard area, certain requirements intended to minimize future flood damage must be satisfied. These provisions are found in the Florida Building Code (FBC) and require design professionals and builders to address requirements related to elevation, wave loads, flood velocity, and debris impact, along with other applicable load and design requirements.²¹

House Joint Resolution 1377 (2021)

House Joint Resolution 1377 (2021), to which this bill is tied, proposes an amendment to Article VII, section 4(i) of the Florida Constitution to authorize the Legislature to prohibit the consideration of any change or improvement to real property used for residential purposes made to improve the property's resistance to flood damage. If approved by the voters, the joint resolution will be effective on January 1, 2023.

¹³ The term "nonhomestead residential property" means residential real property that contains nine or fewer dwelling units, including vacant property zoned and platted for residential use. Section 193.1554(1), F.S.

¹⁴ Sections 193.155(4)(b) and 193.1554(6)(b), F.S.

¹⁵ *Id.*

¹⁶ 42 U.S.C. § 4001 *et seq.*; 44 C.F.R. Ch. I, Subchap. B.; FEMA, *Flood Insurance*, available at <https://www.fema.gov/national-flood-insurance-program> (last visited Feb. 18, 2021).

¹⁷ FEMA, *National Flood Insurance Program Community Rating System*, available at <https://www.fema.gov/floodplain-management/community-rating-system> (last visited Feb. 18, 2021).

¹⁸ Build a Safer Florida Inc., *Flood Resistant Construction and the 6th Edition Florida Building Code* (2017), available at https://floridabuilding.org/fbc/thecode/2017-6edition/BASF_2017_flood_061217.pdf (last visited Mar. 2, 2021).

¹⁹ 44 C.F.R. § 59.1.

²⁰ FEMA, *Flood Maps*, available at https://www.fema.gov/media-library-data/1516468489259-8eb4bfef27ab35159b2f140a2926e809/What_Goes_Into_a_Flood_Map.pdf (last visited Feb. 18, 2021); Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan, State of Florida* (2018), 102-103, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl-shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited Mar. 10, 2021); Florida Department of Environmental Protection, *Florida Adaptation Planning Guidebook: Glossary* (2018), 40-41, available at <https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf> (last visited Mar. 10, 2021).

²¹ Build a Safer Florida Inc., *Flood Resistant Construction and the 6th Edition Florida Building Code* (2017), available at https://floridabuilding.org/fbc/thecode/2017-6edition/BASF_2017_flood_061217.pdf (last visited Mar. 2, 2021).

Effect of the Bill

The bill specifies that changes, additions, or improvements that replace all or a portion of a homestead or nonhomestead residential property for the purpose of voluntarily elevating the property do not increase the property's assessed value if:

- The square footage of the property after the voluntary elevation does not exceed 1,500 square feet or does not exceed 110 percent of the square footage of the property before the elevation; and
- At the time the voluntary elevation commenced, the property was not deemed uninhabitable in part or in whole under state or local law; all ad valorem taxes, special assessments, county or municipal utility charges, and other government-imposed liens against the property had been paid; and the property did not comply with FEMA's National Flood Insurance Program requirements and Florida Building Code elevation requirements and was elevated in compliance with such requirements.

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 of the previous area. Conforming areas below an elevated structure designated only for parking, storage, or access may not be included in the 110 percent calculation unless the area exceeds 110 percent of the square footage before the voluntary elevation.

The bill requires the property owner to provide elevation certificates for both the original and elevated property.

The bill specifies that the term "voluntary elevation" or "voluntarily elevated" means the elevation of an existing nonconforming property or the removal and rebuilding of a nonconforming property.

The bill takes effect on the same date that HJR 1377, or a similar joint resolution, is approved by the electors at the general election held in November 2022 or at an earlier special election specifically authorized for that purpose. If approved by the voters, the joint resolution and this bill will take effect on January 1, 2023.

B. SECTION DIRECTORY:

- Section 1. Amends s. 193.155, F.S., to provide an exemption for the assessment of a homestead property.
- Section 2. Amends s. 193.1554, F.S., to provide an exemption for the assessment of nonhomestead residential property.
- Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) determined that the revenue impact of the bill on local governments is zero/negative indeterminate because the bill is contingent upon passage of the constitutional amendment proposed by HJR 1377. If the constitutional amendment does not pass, the impact of the bill is zero. If the constitutional amendment is approved by the voters, the REC estimated that the bill would have a recurring negative impact in fiscal year 2021-22 of -\$9.4 million on school property tax revenues and -\$15.7 million on non-school property tax revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the voters approve HJR 1377 and this bill passes, certain homestead and nonhomestead residential property owners will be able to elevate their properties without having to pay increased ad valorem taxes on the property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill implements a constitutional amendment to which the mandates provision of Article VII, section 18 of the Florida Constitution does not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2021, the Environment, Agriculture & Flooding Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that changes, additions, or improvements made to replace property that has been destroyed by misfortune or calamity must begin within three years after the damage or destruction occurs.

On April 15, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the property assessment limitation provided for residential properties that are voluntarily elevated does not apply if the property was deemed uninhabitable, if there were outstanding taxes or other liens on the property, or if the classification of the property would change after completion of the voluntary elevation.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.