

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Flores, Chair
Senator Joyner, Vice Chair

MEETING DATE: Wednesday, December 7, 2011
TIME: 2:00 —4:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Flores, Chair; Senator Joyner, Vice Chair; Senators Braynon, Gardiner, Richter, Simmons, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SJR 312 Simmons (Link SJR 314)	Rescinding and Withdrawing House Joint Resolution 381 (2011); Rescinding and withdrawing House Joint Resolution 381 (2011), which relates to ad valorem taxation, contingent upon adoption of a joint resolution proposing alternative amendments to the State Constitution, etc.	CA 11/14/2011 Favorable JU 12/07/2011 BC
2	SJR 314 Simmons (Link SJR 312)	Ad Valorem Taxation; Proposing amendments to the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property, authorize the Legislature to adjust the amount of the exemption, provide that the additional exemption is to be reduced by the difference between the just value and the assessed value, delay a future repeal of provisions limiting annual assessment increases for specified nonhomestead real property, and provide effective dates, etc.	CA 11/14/2011 Favorable JU 12/07/2011 BC

Other Related Meeting Documents

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 Judiciary Committee

BILL: SJR 312

INTRODUCER: Senator Simmons

SUBJECT: Rescinding and Withdrawing House Joint Resolution 381 (2011)

DATE: December 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Munroe</u>	<u>Maclure</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Joint Resolution 312 (SJR 312) rescinds and withdraws House Joint Resolution 381 (2011) which proposes constitutional Amendment 4 on ad valorem taxation scheduled for the 2012 general election ballot. Amendment 4 reduces annual nonhomestead assessment limitations, allows the Legislature, by general law, to prohibit assessment value increases in any year when the market value of a property decreases, and authorizes an additional homestead exemption. The amendment also delays the future repeal of nonhomestead assessment limitations.

Senate Joint Resolution 312 is contingent upon adoption of Senate Joint Resolution 314 or similar legislation proposing alternative amendments to the Florida Constitution. If SJR 312 passes each house of Legislature by an affirmative three-fifths vote as required by s. 1, Article XI of the State Constitution, Amendment 4 will not appear on the 2012 ballot.

II. Present Situation:

House Joint Resolution 381: Proposed Amendment 4 (2012 General Election)

In 2011, the Legislature approved House Joint Resolution 381 (HJR 381) (2011), which relates to ad valorem taxation. House Joint Resolution 381 (2011) proposes amendments to Article VII, sections 4 and 6 and Article XII, section 27 of the Florida Constitution. It also proposes the creation of Article XII, sections 32 and 33 of the Florida Constitution. The ad valorem taxation provisions of HJR 381 (2011) comprise the following:

- Reducing the annual assessment limitation for specified nonhomestead property from 10 percent to 5 percent.
- Allowing the Legislature, by general law, to prohibit increases in the assessed value of a homestead property and certain nonhomestead property in any year where the market value of the property decreases.
- Providing an additional homestead exemption for persons who are entitled to a homestead exemption under Article VII, s. 6(a) of the Florida Constitution, and have not received a homestead exemption in the previous three years.
 - The additional homestead exemption would be equal to 50 percent of the just value of the homestead property, though the exemption may not exceed the median just value of all homestead property within the county.
 - The amount of the additional homestead exemption is reduced each year for five years by 20 percent of the initial exemption or by an amount equal to the difference between the just value and the assessed value, whichever is greater. The exemption is not available in the sixth and subsequent years after it is first received.
 - The exemption applies only to non-school property taxes.
- Delaying until 2023 the repeal, currently scheduled to take effect in 2019, of constitutional amendments that limit annual assessments for specified nonhomestead property.

If approved by voters at the 2012 general election, the assessment limitations and additional homestead exemption shall take effect January 1, 2013. The additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

Rescinding a Proposed Amendment

A joint resolution is used by the Legislature to rescind a proposed amendment or revision of the State Constitution.¹ In Attorney General Opinion 070-21 (April 1970), the Florida Attorney General opined that the Legislature may rescind a proposed constitutional amendment and prevent it from appearing on the ballot by adopting a joint resolution at a subsequent session that is agreed to by the same percentage of the membership required to pass the original joint resolution.²

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house.

A recent example of a proposed constitutional amendment that was rescinded is SJR 2788 (2006), which removed a proposed constitutional amendment dealing with term limits from the 2006 general election ballot.

¹ The Florida Senate, *Manual for Drafting Legislation*, 130 (6th ed. 2009). See also *Crawford v. Gilchrist*, 59 So. 963, 968 (Fla. 1912) (“A right to reconsider action taken is an attribute of all deliberative bodies, and it is not forbidden to the Legislature by the Constitution.”).

² Attorney General Opinion 070-21 cites several examples of resolutions in 1962 and 1968 in which the Legislature exercised its authority to rescind a proposed constitutional amendment and prevent it from appearing on the ballot.

III. Effect of Proposed Changes:

Senate Joint Resolution 312 (SJR 312) rescinds and withdraws House Joint Resolution 381 (2011), which proposes constitutional Amendment 4 on ad valorem taxation scheduled for the 2012 general election ballot. Amendment 4 reduces annual nonhomestead assessment limitations, allows the Legislature, by general law, to prohibit assessment value increases in any year when the market value of a property decreases, and authorizes an additional homestead exemption. The amendment also delays the future repeal of nonhomestead assessment limitations.

Senate Joint Resolution 312 takes effect only if SJR 314 or similar language is adopted by the Legislature. Senate Joint Resolution 314 proposes a constitutional amendment to revise requirements governing property assessments and ad valorem taxation.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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 tenth week and again in the sixth week immediately preceding the week the election is held.

The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal

year. The estimated cost for advertising Amendment 4 is \$376,903.14.³ While these costs will not be incurred if this joint resolution passes, similar costs will be required for SJR 314 or comparable legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³ Department of State, *SJR 314 Analysis* (Oct. 31, 2011) (on file with the Senate Committee on Community Affairs).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Delete line 35
and insert:
take effect only if Senate Joint Resolution 314 or similar

By Senator Simmons

22-00252-12

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Senate Joint Resolution

A joint resolution rescinding and withdrawing House Joint Resolution 381 (2011), which relates to ad valorem taxation, contingent upon adoption of a joint resolution proposing alternative amendments to the State Constitution.

Be It Resolved by the Legislature of the State of Florida:

That House Joint Resolution 381, adopted in the 2011 Regular Session and entitled "A joint resolution proposing amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of Sections 32 and 33 of Article XII of the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property who have not owned homestead property for a specified time before purchase of the current homestead property, and application and limitations with respect thereto, delay the future repeal of provisions limiting annual assessment increases for specified nonhomestead real property, and provide effective dates," is rescinded and withdrawn.

BE IT FURTHER RESOLVED that the proposed amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of Sections 32 and 33 of Article XII of the State Constitution not be submitted to the electors of this

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

22-00252-12

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state for approval or rejection at the 2012 presidential preference primary or the 2012 general election and the Secretary of State shall withhold House Joint Resolution 381 (2011) from the ballot.

BE IT FURTHER RESOLVED that this joint resolution shall take effect only if Senate Joint Resolution ____ or similar legislation is adopted by the Legislature.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Judiciary Committee

BILL: SJR 314

INTRODUCER: Senator Simmons

SUBJECT: Ad Valorem Taxation

DATE: December 6, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Munroe</u>	<u>Maclure</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This joint resolution proposes amendments to Article VII, section 4, of the Florida Constitution to permit the Legislature to prohibit increases in the assessed value of homestead and certain nonhomestead property if the just value of the property decreases. The joint resolution also reduces the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 7 percent. An amendment to Article VII, section 6, of the Florida Constitution is also proposed to create an additional homestead exemption. The Legislature is authorized to adjust the amount of the exemption.

This joint resolution delays the current automatic repeal of subsections (g) and (h) of section 4, Article VII, of the Florida Constitution,¹ relating to assessments of certain nonhomestead residential property by amending Article XII, section 27, of the Florida Constitution. Article XII is further amended to create two new sections that provide when the amendments to Article VII sections 4 and 6, of the Florida Constitution shall take effect.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage. Should this joint resolution be adopted, an additional joint resolution will be required to rescind and withdraw HJR 381 (2011), which is to go before the voters as Amendment 4 on the November 2012 ballot.

¹ The provisions relating to assessments of certain nonhomestead residential property were adopted in January 2008 and were originally designated as subsections (f) and (g) of section 4 of Article VII. Article XII, section 27, schedules these provisions for automatic repeal and currently refers to them as subsections (f) and (g). However, the provisions were redesignated in November 2008 as subsections (g) and (h). In addition to delaying the automatic repeal, this joint resolutions corrects the constitutional references in the repeal language to reflect subsections (g) and (h).

This joint resolution creates two undesignated sections in Article XII, of the Florida Constitution.

This joint resolution proposes amendments to sections 4 and 6, Article VII, and section 27, Article XII, of the Florida Constitution.

II. Present Situation:

Property Valuation in Florida

Just Value

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.²

Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.

- Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.³
- Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.⁴
- Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁵
- Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 years of age or older.⁶
- The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁷
- Certain working waterfront property is assessed based upon the property's current use.⁸

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by the Florida Statutes. Such exemptions

² 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 Fla. Const. art. VII, s. 4(a).

⁴ Fla. Const. art. VII, s. 4(c).

⁵ Fla. Const. art. VII, s. 4(e).

⁶ Fla. Const. art. VII, s. 4(f).

⁷ Fla. Const. art. VII, s. 4(i).

⁸ Fla. Const. art. VII, s. 4(j).

include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁹

Tax Exemptions and Assessment Limitations

Homestead Exemption

Article VII, section 6, of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains thereon the permanent residence of the owner is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.

Other Specific Exemptions

Article VII, section 3, of the Florida Constitution, provides for other specific exemptions from property taxes.

- Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law.¹⁰
- Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons, and persons who are totally and permanently disabled.¹¹
- A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.¹²
- A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.¹³
- Tangible personal property is exempt up to \$25,000 of its assessed value.¹⁴
- There is an exemption for real property dedicated in perpetuity for conservation purposes.¹⁵
- In November 2010, voters approved a constitutional amendment that adds an additional exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.¹⁶

Homestead Assessment Limitation: Save Our Homes

The *Save Our Homes* assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d), of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of 3 percent or the percentage change in the Consumer Price Index (CPI).¹⁷ In addition, no assessment may exceed just value.

⁹ Fla. Const. art. VII, ss. 3 and 6.

¹⁰ Fla. Const. art. VII, s. 3(a).

¹¹ Fla. Const. art. VII, s. 3(b).

¹² Fla. Const. art. VII, s. 3(c).

¹³ Fla. Const. art. VII, s. 3(d).

¹⁴ Fla. Const. art. VII, s. 3(e).

¹⁵ Fla. Const. art. VII, s. 3(f).

¹⁶ Fla. Const. art. VII, s. 3(g).

¹⁷ Fla. Const. art. VII, s. 4(d).

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued *Save Our Homes* benefit. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the *Save Our Homes* accrued benefit to the new homestead.

Nonhomestead Assessment Limitations

Article VII, subsections 4(g) and (h), of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for nonhomestead residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, nonhomestead residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control.¹⁸

Article XII, section 27, of the Florida Constitution, provides that subsections (f) and (g),¹⁹ Article VII (creating limitations on annual assessment increases of specified nonhomestead property) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

Rule 12D-8.0062, Florida Administrative Code (F.A.C.): Recapture Rule

In October 1995, the Governor and the Cabinet adopted rule 12D-8.0062, F.A.C., of the Department of Revenue, entitled *Assessments; Homestead; and Limitations*.²⁰ The administrative intent of this rule is to govern “the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, Section 4(c),²¹ Florida Constitution and Section 193.155, F.S.”²²

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the *Recapture Rule*. This provision requires property appraisers to increase the prior year assessed value of a homestead property by the lower of 3 percent or the percent increase in the CPI on all property where the value is lower than the just value.

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the *Save Our Homes* cap

¹⁸ Fla. Const. art. VII, s. 4(g) and (h).

¹⁹ See note 1, *supra*.

²⁰ While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-8.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.027, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just, and otherwise in compliance with the requirements of general law and the constitution.

²¹ This provision is the *Save Our Homes* assessment limitation that was amended into the Florida Constitution in 1992 and is currently designated as Article VII, section 4(d) of the Florida Constitution.

²² Rule 12D-8.0062(1), F.A.C.

whose property is assessed at less than just value may see an increase in the assessed value of their home during years when the just market value of their property decreased.²³

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

Markham v. Department of Revenue²⁴

On March 17, 1995, William Markham, the Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious."²⁵ Markham also claimed that subsection (5) of the rule was at variance with the constitution – specifically that it conflicted with the intent of the ballot initiative and that a third limitation relating to market value or movement²⁶ should be incorporated into the language of the rule to make it compatible with the language in Article VII, section 4(c), of the Florida Constitution.

A final order was issued by the Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsections (5) and (6) of the administrative rule were consistent with Article VII, section 4(c), of the Florida Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.²⁷

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.²⁸

Amendment 3 Proposed for the November 2010 Ballot: SJR 532 (2009)

In 2009, the Legislature passed SJR 532, which was to go before the voters as Amendment 3 on the November 2010 ballot. Among the provisions of Amendment 3:

- Reduce the annual nonhomestead assessment limitation from 10 percent to 5 percent.
- Provide an additional homestead exemption for persons who have not owned a principal residence in the previous eight years.²⁹

²³ *Markham v. Dep't of Revenue*, Case No. 95-1339RP, 1995 WL 1053056 (Fla. DOAH 1995) (stating that "[s]ubsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").

²⁴ *Id.*

²⁵ *Id.* at *1.

²⁶ *Id.* at *6 (stating that "[t]his limitation, grounded on 'market movement,' would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").

²⁷ *Id.* at *6.

²⁸ *Id.* at *6 -*7.

²⁹ This was popularly referred to as a first-time homebuyer exemption.

- The additional homestead exemption would have been equal to 25 percent of the just *value* of the homestead in the first year for all levies, up to \$100,000.
- The amount of the additional homestead exemption was to decrease by 20 percent of the initial exemption during each of the succeeding five years, until it was no longer available in the sixth and subsequent years.³⁰

In August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Article XI, section 5(a), of the Florida Constitution.³¹

Amendment 4 Proposed for the November 2012 Ballot: HJR 381 (2011)

In 2011, the Legislature approved HJR 381, which is to go before the voters as Amendment 4 on the November 2012 ballot. HJR 381 (2011) proposes amendments to Article VII, sections 4 and 6 and Article XII, section 27 of the Florida Constitution. It also proposes the creation of Article XII, sections 32 and 33 of the Florida Constitution. The ad valorem taxation provisions of HJR 381 (2011) comprise the following:

- Reducing the annual assessment limitation for specified nonhomestead property from 10 percent to 5 percent.
- Allowing the Legislature, by general law, to prohibit increases in the assessed value of a homestead property and certain nonhomestead property in any year where the market value of the property decreases.
- Providing an additional homestead exemption for persons who are entitled to a homestead exemption under Article VII, section 6(a) of the Florida Constitution, and have not received a homestead exemption in the previous three years.
 - The additional homestead exemption would be equal to 50 percent of the just value of the homestead property though the exemption may not exceed the median just value of all homestead property within the county.
 - The amount of the additional homestead exemption is reduced each year for five years by 20 percent of the initial exemption or by an amount equal to the difference between the just value and the assessed value, whichever is greater. The exemption is not available in the sixth and subsequent years after it is first received.
 - The exemption applies only to non-school property taxes.
- Delaying the currently scheduled repeal of constitutional amendments that limit annual assessments for specified nonhomestead property from 2019 to 2023.

If approved by voters at the 2012 general election, the assessment limitations and additional homestead exemption shall take effect January 1, 2013. The additional homestead exemption shall be available for properties purchased on or after January 1, 2012.

³⁰ CS for SJR 532, 1st Eng. (2009 Reg. Session).

³¹ *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).

III. Effect of Proposed Changes:

Assessment Limitation on Homestead and certain Nonhomestead Property: Recapture

The joint resolution proposes to amend paragraph (1) of subsections (d), (g), and (h) in section 4, Article VII, of the Florida Constitution, to authorize the Legislature to provide by general law that an assessment may not increase if the just value of the property is less than the just value of the property on the preceding January 1. This authority to limit increases in the assessed value of homestead and certain nonhomestead property does not apply to the assessment of changes, additions, reductions, or improvements to homestead property as provided by subsection (d)(5) in section 4, Article VII, of the Florida Constitution.

The joint resolution also deletes obsolete language provided in paragraph (8) of subsection (d) in section 4, Article VII, of the Florida Constitution.

Assessment Limitation on Specified Nonhomestead Property

The joint resolution proposes to amend paragraph (1) of subsections (g) and (h) in section 4, Article VII, to reduce the limitation on annual assessment increases applicable to nonhomestead property from 10 percent to 7 percent.

Additional Homestead Exemption

The joint resolution proposes to create subsection (f) in section 6, Article VII, of the Florida Constitution. This amendment allows individuals who establish a right to receive a homestead exemption under Article VII, section 6(a), of the Florida Constitution, to receive an additional homestead exemption. This exemption is equal to 30 percent of the homestead property's just value in excess of \$75,000 but less than or equal to \$200,000, plus 15 percent of the homestead property's just value in excess of \$200,000 but less than or equal to \$400,000. The value of the additional homestead exemption shall be reduced by the difference between the just value of the property and the assessed value of the property determined under subsection (d) in section 4, Article VII of the Florida Constitution.

By general law, the Legislature may adjust the percent of just value or the maximum and minimum levels of just value used to calculate the additional homestead exemption, but may not reduce the value of the additional exemption below the value established in this subsection. The exemption does not apply to school levies.

Scheduled Repeal of Assessment Limitation on Specified Nonhomestead Property

The joint resolution amends Article XII, section 27 of the Florida Constitution, to delay until January 1, 2023, the repeal, currently scheduled to take effect January 1, 2019, of subsections (g) and (h) of section 4, of Article VII of the Florida Constitution. These subsections limit annual increases for specified nonhomestead real property. The joint resolution delays until 2022 the submission of an amendment proposing the abrogation of such repeal to the voters.

Article XII, section 27, of the Florida Constitution, is further amended to establish a schedule for authorizing the proposed property assessment and additional homestead exemption amendments

of the joint resolution. If submitted to the electors at a special election held on the date of the 2012 presidential preference primary, the amendments shall take effect upon approval and shall operate retroactively to January 1, 2012. If submitted to the electors at the 2012 general election, the amendments, upon approval, shall take effect January 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Article XI, section 1, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

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 tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

Article XI, section 5(e), of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

Article XI, section 5(a), of the Florida Constitution, and s. 101.161(1), F.S., require 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.’”³²

Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”³³ In the past, taxpayers have argued that disparate treatment in real property tax assessments constitutes an equal protection violation.³⁴ In these instances, courts have used the rational basis test to determine the constitutionality of discriminatory treatment in property tax assessments.³⁵ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.³⁶

It has been argued that the recapture rule provided in section (5) of Rule 12D-8.0062, F.A.C., diminishes the existing inequity between property assessments over time.³⁷ To the extent that this view is adopted, taxpayers may argue that the elimination of the recapture rule creates a stronger argument for an Equal Protection Clause violation. If this argument is made, the court would need to determine whether the components of this joint resolution are rationally related to a legitimate state interest.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, this joint resolution will provide ad valorem tax relief to homestead and specified nonhomestead owners. Owners of specified residential rental and commercial real property may experience a reduction in tax assessments due to the 7 percent assessment limitation.

³² *Roberts*, 43 So. 3d at 659 (quoting *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008)).

³³ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

³⁴ *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000) (holding that the Florida homestead exemption did not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Commerce Clause). *See also Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009) (holding that the Save Our Homes Amendment of the State Constitution did not violate a nonresident’s rights under the Equal Protection Clause). *See also Nordlinger v. Hahn*, 505 U.S. 1 (1992) (stating that the constitutional amendment in California that limited real property tax increases, in the absence of a change of ownership to 2 percent per year, was not a violation of the Equal Protection Clause).

³⁵ *Nordlinger*, 505 U.S. at 33-34 (stating that a “classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose”).

³⁶ *Id.*

³⁷ Walter Hellerstein et al., LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA’S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES, at 83 (on file with the Senate Committee on Community Affairs).

B. Private Sector Impact:

Assessment Limitation on Homestead Property: Recapture

If approved by the voters and implemented by the Legislature, taxes will be reduced for those taxpayers whose homesteads or specified nonhomesteads are depreciating but are still assessed at less than just value. The joint resolution will redistribute the tax burden. Nonhomestead and recently established homestead property will pay a larger proportion of the cost of local services. To the extent that local governments do not raise millage rates, taxpayers may experience a reduction in government and education services due to any reductions in ad valorem tax revenues.

Assessment Limitation on Nonhomestead Property

Owners of existing residential rental and commercial real property may experience property tax savings. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

Additional Homestead Exemption

If approved by the voters, homestead owners whose just values are greater than \$75,000 may experience reductions in ad valorem taxes. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) discussed both SJR 314 and HJR 381 (2011) at their November 10, 2011, meeting.³⁸ The figures in the tables below represent the loss in local government taxes that would occur if the voters approve either of the amendments and the same millage rates levied in 2011 are levied in future years. The statewide average millage rate for non-school taxes utilized is 10.9 mills.

SJR 314	FY 2013-2014	FY 2014-2015	FY 2015-2016
10% - 7% Limitation	-\$44.5	-\$82.5	-\$118.0
Homestead Exemption	-\$565.1	-\$576.0	-\$579.6

HJR 381 (2011)	FY 2013-2014	FY 2014-2015	FY 2015-2016
10% - 5% Limitation	-\$82.3	-\$162.2	-\$243.0
Homestead Exemption	-\$36.0	-\$55.3	-\$77.7

³⁸ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference Results* (Nov. 11, 2011), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact1110.pdf> (last visited Nov. 14, 2011).

❖ Figures in millions.

Technical Deficiencies:

None.

VI. Related Issues:

Senate Joint Resolution 312 rescinds and withdraws House Joint Resolution 381 (2011), which proposes constitutional Amendment 4 on ad valorem taxation scheduled for the 2012 general election ballot. The effective date of SJR 312 is contingent on the passage of SJR 314.

Senate Joint Resolution 314 amends Article XII, section 27, of the Florida Constitution, to establish a schedule for authorizing the proposed property assessment and additional homestead exemption amendments of the joint resolution. If SJR 314 is submitted to the electors at a special election held on the date of the 2012 presidential preference primary, the amendments shall take effect upon approval and shall operate retroactively to January 1, 2012. If submitted to the electors at the 2012 general election, the amendments, upon approval, shall take effect January 1, 2013. The presidential preference primary election is scheduled on January 31, 2012.³⁹

VII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁹ See *Calendar of Election Dates, 2012 Election Dates*, Florida Department of State, Division of Elections, available at <http://election.dos.state.fl.us/calendar/elecdate.shtml> (last visited Dec. 6, 2011).



355960

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment

Delete lines 349 - 406
and insert:
from 10 percent to 7 percent shall take effect January 1, 2013.
Additional homestead exemption.—This section and the
amendment to Section 6 of Article VII providing for an
additional homestead exemption shall take effect January 1,
2013.

BE IT FURTHER RESOLVED that the following statement be
placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTIONS 4, 6



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ARTICLE XII, SECTION 27

PROPERTY TAX LIMITATIONS; ADDITIONAL HOMESTEAD EXEMPTION.—

(1) In certain circumstances, the law requires the assessed value of real property to increase when the just value of the property is greater than its assessed value. This amendment authorizes the Legislature, by general law, to prohibit such increase in the assessment of property whose just value is less than its just value on the preceding assessment date. This amendment takes effect January 1, 2013.

(2) The State Constitution generally limits increases in the assessed value of nonhomestead real property for property tax purposes to 10 percent annually. This amendment reduces that limit to 7 percent. This amendment takes effect January 1, 2013.

(3) This amendment also provides owners of homestead property an additional homestead exemption for all levies other than school district levies in an amount equal to 30 percent of the homestead property's just value between \$75,000 and \$200,000, plus 15 percent of the homestead property's just value between \$200,000 and \$400,000. The Legislature may adjust the amount of the additional homestead exemption but may not reduce it below what is provided in this amendment. The value of the additional homestead exemption shall be reduced by the difference between the just value of the property and its assessed value. This amendment takes effect January 1, 2013.

By Senator Simmons

22-00173-12

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Senate Joint Resolution

A joint resolution proposing amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of two new Sections in Article XII of the State Constitution to allow the Legislature by general law to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for owners of homestead property, authorize the Legislature to adjust the amount of the exemption, provide that the additional exemption is to be reduced by the difference between the just value and the assessed value, delay a future repeal of provisions limiting annual assessment increases for specified nonhomestead real property, and provide effective dates.

Be It Resolved by the Legislature of the State of Florida:

That the following amendments to Sections 4 and 6 of Article VII and Section 27 of Article XII and the creation of two new Sections in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

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FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 ~~of this Article~~ shall have their homestead assessed ~~at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.~~

(1) Assessments subject to this subsection shall change ~~be changed~~ annually on January 1 ~~1st~~ of each year, ~~but these changes in assessments~~

a. A change in an assessment may ~~shall~~ not exceed the lower of the following:

1.a. ~~Three percent (3%)~~ of the assessment for the prior year.

2.b. ~~The percent change in the Consumer Price Index for all~~

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59 urban consumers, U.S. City Average, all items 1967=100, or a
60 successor index reports for the preceding calendar year as
61 initially reported by the United States Department of Labor,
62 Bureau of Labor Statistics.

63 b. The legislature may provide by general law that, except
64 for changes, additions, reductions, or improvements to homestead
65 property assessed as provided in paragraph (5), an assessment
66 may not increase if the just value of the property is less than
67 the just value of the property on the preceding January 1.

68 (2) ~~An~~ ~~no~~ assessment may not ~~shall~~ exceed just value.

69 (3) After a ~~any~~ change of ownership, as provided by general
70 law, homestead property shall be assessed at just value as of
71 January 1 of the following year, unless the provisions of
72 paragraph (8) apply. Thereafter, the homestead shall be assessed
73 as provided in this subsection.

74 (4) New homestead property shall be assessed at just value
75 as of January 1 ~~1st~~ of the year following the establishment of
76 the homestead, unless the provisions of paragraph (8) apply.
77 That assessment shall ~~only~~ change only as provided in this
78 subsection.

79 (5) Changes, additions, reductions, or improvements to
80 homestead property shall be assessed as provided for by general
81 law, ~~provided~~. However, after the adjustment for any change,
82 addition, reduction, or improvement, the property shall be
83 assessed as provided in this subsection.

84 (6) In the event of a termination of homestead status, the
85 property shall be assessed as provided by general law.

86 (7) The provisions of this subsection amendment are
87 severable. If a provision ~~any of the provisions~~ of this

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88 subsection is amendment shall be held unconstitutional by a any
89 court of competent jurisdiction, the decision of the such court
90 ~~does shall~~ not affect or impair any remaining provisions of this
91 subsection amendment.

92 (8)a. A person who ~~establishes a new homestead as of~~
93 ~~January 1, 2009, or January 1 of any subsequent year and who~~ has
94 received a homestead exemption pursuant to Section 6 ~~of this~~
95 ~~Article~~ as of January 1 of either of the 2 ~~two~~ years immediately
96 preceding the establishment of a ~~the~~ new homestead is entitled
97 to have the new homestead assessed at less than just value. ~~If~~
98 ~~this revision is approved in January of 2008, a person who~~
99 ~~establishes a new homestead as of January 1, 2008, is entitled~~
100 ~~to have the new homestead assessed at less than just value only~~
101 ~~if that person received a homestead exemption on January 1,~~
102 ~~2007.~~ The assessed value of the newly established homestead
103 shall be determined as follows:

104 1. If the just value of the new homestead is greater than
105 or equal to the just value of the prior homestead as of January
106 1 of the year in which the prior homestead was abandoned, the
107 assessed value of the new homestead shall be the just value of
108 the new homestead minus an amount equal to the lesser of
109 \$500,000 or the difference between the just value and the
110 assessed value of the prior homestead as of January 1 of the
111 year in which the prior homestead was abandoned. Thereafter, the
112 homestead shall be assessed as provided in this subsection.

113 2. If the just value of the new homestead is less than the
114 just value of the prior homestead as of January 1 of the year in
115 which the prior homestead was abandoned, the assessed value of
116 the new homestead shall be equal to the just value of the new

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 117 homestead divided by the just value of the prior homestead and
 118 multiplied by the assessed value of the prior homestead.
 119 However, if the difference between the just value of the new
 120 homestead and the assessed value of the new homestead calculated
 121 pursuant to this sub-subparagraph is greater than \$500,000, the
 122 assessed value of the new homestead shall be increased so that
 123 the difference between the just value and the assessed value
 124 equals \$500,000. Thereafter, the homestead shall be assessed as
 125 provided in this subsection.

126 b. By general law and subject to conditions specified
 127 therein, the legislature shall provide for application of this
 128 paragraph to property owned by more than one person.

129 (e) The legislature may, by general law, for assessment
 130 purposes and subject to the provisions of this subsection, allow
 131 counties and municipalities to authorize by ordinance that
 132 historic property may be assessed solely on the basis of
 133 character or use. Such character or use assessment shall apply
 134 only to the jurisdiction adopting the ordinance. The
 135 requirements for eligible properties must be specified by
 136 general law.

137 (f) A county may, in the manner prescribed by general law,
 138 provide for a reduction in the assessed value of homestead
 139 property to the extent of any increase in the assessed value of
 140 that property which results from the construction or
 141 reconstruction of the property for the purpose of providing
 142 living quarters for one or more natural or adoptive grandparents
 143 or parents of the owner of the property or of the owner's spouse
 144 if at least one of the grandparents or parents for whom the
 145 living quarters are provided is 62 years of age or older. Such a

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 146 reduction may not exceed the lesser of the following:
 147 (1) The increase in assessed value resulting from
 148 construction or reconstruction of the property.

149 (2) Twenty percent of the total assessed value of the
 150 property as improved.

151 (g) For all levies other than school district levies,
 152 assessments of residential real property, as defined by general
 153 law, which contains nine units or fewer and which is not subject
 154 to the assessment limitations set forth in subsections (a)
 155 through (d) shall change only as provided in this subsection.

156 (1) Assessments subject to this subsection shall be changed
 157 annually on the date of assessment provided by law. However,
 158 ~~but~~ those changes in assessments may ~~shall~~ not exceed 7 ~~ten~~
 159 percent ~~(10%)~~ of the assessment for the prior year. The
 160 legislature may provide by general law that, except for changes,
 161 additions, reductions, or improvements to property assessed as
 162 provided in paragraph (4), an assessment may not increase if the
 163 just value of the property is less than the just value of the
 164 property on the preceding date of assessment provided by law.

165 (2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

166 (3) After a change of ownership or control, as defined by
 167 general law, including any change of ownership of a legal entity
 168 that owns the property, such property shall be assessed at just
 169 value as of the next assessment date. Thereafter, such property
 170 shall be assessed as provided in this subsection.

171 (4) Changes, additions, reductions, or improvements to such
 172 property shall be assessed as provided for by general law. +
 173 However, after the adjustment for any change, addition,
 174 reduction, or improvement, the property shall be assessed as

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175 provided in this subsection.

176 (h) For all levies other than school district levies,
177 assessments of real property that is not subject to the
178 assessment limitations set forth in subsections (a) through (d)
179 and (g) shall change only as provided in this subsection.

180 (1) Assessments subject to this subsection shall be changed
181 annually on the date of assessment provided by law. However,
182 ~~but~~ those changes in assessments may ~~shall~~ not exceed 7 ~~ten~~
183 percent ~~(10%)~~ of the assessment for the prior year. The
184 legislature may provide by general law that, except for changes,
185 additions, reductions, or improvements to property assessed as
186 provided in paragraph (5), an assessment may not increase if the
187 just value of the property is less than the just value of the
188 property on the preceding date of assessment provided by law.

189 (2) ~~An~~ No assessment may not ~~shall~~ exceed just value.

190 (3) The legislature must provide that such property shall
191 be assessed at just value as of the next assessment date after a
192 qualifying improvement, as defined by general law, is made to
193 such property. Thereafter, such property shall be assessed as
194 provided in this subsection.

195 (4) The legislature may provide that such property shall be
196 assessed at just value as of the next assessment date after a
197 change of ownership or control, as defined by general law,
198 including any change of ownership of the legal entity that owns
199 the property. Thereafter, such property shall be assessed as
200 provided in this subsection.

201 (5) Changes, additions, reductions, or improvements to such
202 property shall be assessed as provided for by general law.
203 However, after the adjustment for any change, addition,

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204 reduction, or improvement, the property shall be assessed as
205 provided in this subsection.

206 (i) The legislature, by general law and subject to
207 conditions specified therein, may prohibit the consideration of
208 the following in the determination of the assessed value of real
209 property used for residential purposes:

210 (1) Any change or improvement made for the purpose of
211 improving the property's resistance to wind damage.

212 (2) The installation of a renewable energy source device.

213 (j) (1) The assessment of the following working waterfront
214 properties shall be based upon the current use of the property:

215 a. Land used predominantly for commercial fishing purposes.

216 b. Land that is accessible to the public and used for
217 vessel launches into waters that are navigable.

218 c. Marinas and drystacks that are open to the public.

219 d. Water-dependent marine manufacturing facilities,
220 commercial fishing facilities, and marine vessel construction
221 and repair facilities and their support activities.

222 (2) The assessment benefit provided by this subsection is
223 subject to conditions and limitations and reasonable definitions
224 as specified by the legislature by general law.

225 SECTION 6. Homestead exemptions.-

226 (a) Every person who has the legal or equitable title to
227 real estate and maintains thereon the permanent residence of the
228 owner, or another legally or naturally dependent upon the owner,
229 shall be exempt from taxation thereon, except assessments for
230 special benefits, up to the assessed valuation of \$25,000
231 ~~twenty five thousand dollars~~ and, for all levies other than
232 school district levies, on the assessed valuation greater than

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233 \$50,000 ~~fifty thousand dollars~~ and up to \$75,000 ~~seventy five~~
 234 ~~thousand dollars~~, upon establishment of right thereto in the
 235 manner prescribed by law. The real estate may be held by legal
 236 or equitable title, by the entireties, jointly, in common, as a
 237 condominium, or indirectly by stock ownership or membership
 238 representing the owner's or member's proprietary interest in a
 239 corporation owning a fee or a leasehold initially in excess of
 240 98 ~~ninety eight~~ years. The exemption shall not apply with
 241 respect to any assessment roll until such roll is first
 242 determined to be in compliance with the provisions of Section 4
 243 by a state agency designated by general law. This exemption is
 244 repealed on the effective date of any amendment to this Article
 245 which provides for the assessment of homestead property at less
 246 than just value.

247 (b) Not more than one exemption under subsection (a) and
 248 one exemption under subsection (f) shall be allowed any
 249 individual or family unit or with respect to any residential
 250 unit. No exemption shall exceed the value of the real estate
 251 assessable to the owner or, in case of ownership through stock
 252 or membership in a corporation, the value of the proportion
 253 which the interest in the corporation bears to the assessed
 254 value of the property.

255 (c) By general law and subject to conditions specified
 256 therein, the legislature may provide to renters, who are
 257 permanent residents, ad valorem tax relief on all ad valorem tax
 258 levies. Such ad valorem tax relief shall be in the form and
 259 amount established by general law.

260 (d) The legislature may, by general law, allow counties or
 261 municipalities, for the purpose of their respective tax levies

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262 and subject to the provisions of general law, to grant an
 263 additional homestead tax exemption not exceeding \$50,000 ~~fifty~~
 264 ~~thousand dollars~~ to any person who has the legal or equitable
 265 title to real estate and maintains thereon the permanent
 266 residence of the owner and who has attained age 65 ~~sixty five~~
 267 and whose household income, as defined by general law, does not
 268 exceed \$20,000 ~~twenty thousand dollars~~. The general law must
 269 allow counties and municipalities to grant this additional
 270 exemption, within the limits prescribed in this subsection, by
 271 ordinance adopted in the manner prescribed by general law, and
 272 must provide for the periodic adjustment of the income
 273 limitation prescribed in this subsection for changes in the cost
 274 of living.

275 (e) Each veteran who is age 65 or older who is partially or
 276 totally permanently disabled shall receive a discount from the
 277 amount of the ad valorem tax otherwise owed on homestead
 278 property the veteran owns and resides in if the disability was
 279 combat related, the veteran was a resident of this state at the
 280 time of entering the military service of the United States, and
 281 the veteran was honorably discharged upon separation from
 282 military service. The discount shall be in a percentage equal to
 283 the percentage of the veteran's permanent, service-connected
 284 disability as determined by the United States Department of
 285 Veterans Affairs. To qualify for the discount granted by this
 286 subsection, an applicant must submit to the county property
 287 appraiser, by March 1, proof of residency at the time of
 288 entering military service, an official letter from the United
 289 States Department of Veterans Affairs stating the percentage of
 290 the veteran's service-connected disability and such evidence

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 291 that reasonably identifies the disability as combat related, and
 292 a copy of the veteran's honorable discharge. If the property
 293 appraiser denies the request for a discount, the appraiser must
 294 notify the applicant in writing of the reasons for the denial,
 295 and the veteran may reapply. The legislature may, by general
 296 law, waive the annual application requirement in subsequent
 297 years. This subsection shall take effect December 7, 2006, is
 298 self-executing, and does not require implementing legislation.

299 (f) Every person who has established the right to receive
 300 the homestead exemption provided in subsection (a) is entitled
 301 to an additional homestead exemption for all levies other than
 302 school district levies in an amount equal to 30 percent of the
 303 homestead property's just value in excess of \$75,000 but less
 304 than or equal to \$200,000, plus 15 percent of the homestead
 305 property's just value in excess of \$200,000 but less than or
 306 equal to \$400,000. The value of the additional homestead
 307 exemption shall be reduced by the difference between the just
 308 value of the property and the assessed value of the property
 309 determined under Section 4(d). By general law, the legislature
 310 may adjust the percent of just value or the maximum and minimum
 311 levels of just value used to calculate the additional homestead
 312 exemption, but may not reduce the value of the additional
 313 exemption below the value established in this subsection.

314 ARTICLE XII

315 SCHEDULE

316 SECTION 27. Property tax exemptions and limitations on
 317 property tax assessments.—The amendments to Sections 3, 4, and 6
 318 of Article VII, providing a \$25,000 exemption for tangible
 319 personal property, providing an additional \$25,000 homestead

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 320 exemption, authorizing transfer of the accrued benefit from the
 321 limitations on the assessment of homestead property, and this
 322 section, if submitted to the electors of this state for approval
 323 or rejection at a special election authorized by law to be held
 324 on January 29, 2008, shall take effect upon approval by the
 325 electors and shall operate retroactively to January 1, 2008, or,
 326 if submitted to the electors of this state for approval or
 327 rejection at the next general election, shall take effect
 328 January 1 of the year following such general election. The
 329 amendments to Section 4 of Article VII creating subsections (g)
 330 ~~(f)~~ and (h) ~~(g)~~ of that section, creating a limitation on annual
 331 assessment increases for specified real property, shall take
 332 effect upon approval of the electors and shall first limit
 333 assessments beginning January 1, 2009, if approved at a special
 334 election held on January 29, 2008, or shall first limit
 335 assessments beginning January 1, 2010, if approved at the
 336 general election held in November of 2008. Subsections (g) ~~(f)~~
 337 and (h) ~~(g)~~ of Section 4 of Article VII are repealed effective
 338 January 1, 2023 ~~2019~~; however, the legislature shall by joint
 339 resolution propose an amendment abrogating the repeal of
 340 subsections (g) ~~(f)~~ and (h) ~~(g)~~, which shall be submitted to the
 341 electors of this state for approval or rejection at the general
 342 election of 2022 ~~2018~~ and, if approved, shall take effect
 343 January 1, 2023 ~~2019~~.

344 Property assessments.—This section and the amendments to
 345 Section 4 of Article VII authorizing the legislature to prohibit
 346 increases in the assessed value of homestead property that has a
 347 declining just value and reducing the limit on the maximum
 348 annual increase in the assessed value of nonhomestead property

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 349 from 10 percent to 7 percent, if submitted to the electors of
 350 this state for approval or rejection at a special election
 351 authorized by law to be held on the date of the 2012
 352 presidential preference primary, shall take effect upon approval
 353 by the electors and shall operate retroactively to January 1,
 354 2012, or, if submitted to the electors of this state for
 355 approval or rejection at the 2012 general election, shall take
 356 effect January 1, 2013.

Additional homestead exemption.—This section and the
 357 amendment to Section 6 of Article VII providing for an
 358 additional homestead exemption, if submitted to the electors of
 359 this state for approval or rejection at a special election
 360 authorized by law to be held on the date of the 2012
 361 presidential preference primary, shall take effect upon approval
 362 by the electors and shall operate retroactively to January 1,
 363 2012, or, if submitted to the electors of this state for
 364 approval or rejection at the 2012 general election, shall take
 365 effect January 1, 2013.

BE IT FURTHER RESOLVED that the following statement be
 367 placed on the ballot:

369 CONSTITUTIONAL AMENDMENT
 370 ARTICLE VII, SECTIONS 4, 6
 371 ARTICLE XII, SECTION 27

372 PROPERTY TAX LIMITATIONS; ADDITIONAL HOMESTEAD EXEMPTION.—

373 (1) In certain circumstances, the law requires the assessed
 374 value of real property to increase when the just value of the
 375 property is greater than its assessed value. This amendment
 376 authorizes the Legislature, by general law, to prohibit such
 377 increase in the assessment of property whose just value is less

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 378 than its just value on the preceding assessment date. If
 379 approved at a special election held on the date of the 2012
 380 presidential preference primary, this amendment takes effect
 381 upon approval by the voters and operates retroactively to
 382 January 1, 2012, or, if approved by the voters at the general
 383 election, takes effect January 1, 2013.

(2) The State Constitution generally limits increases in
 384 the assessed value of nonhomestead real property for property
 385 tax purposes to 10 percent annually. This amendment reduces that
 386 limit to 7 percent. If approved at a special election held on
 387 the date of the 2012 presidential preference primary, this
 388 amendment takes effect upon approval by the voters and operates
 389 retroactively to January 1, 2012, or, if approved by the voters
 390 at the general election, takes effect January 1, 2013.

(3) This amendment also provides owners of homestead
 392 property an additional homestead exemption for all levies other
 393 than school district levies in an amount equal to 30 percent of
 394 the homestead property's just value between \$75,000 and
 395 \$200,000, plus 15 percent of the homestead property's just value
 396 between \$200,000 and \$400,000. The Legislature may adjust the
 397 amount of the additional homestead exemption but may not reduce
 398 it below what is provided in this amendment. The value of the
 399 additional homestead exemption shall be reduced by the
 400 difference between the just value of the property and its
 401 assessed value. The amendment takes effect upon approval of the
 402 voters and operates retroactively to January 1, 2012, if
 403 approved at the special election held on the date of the 2012
 404 presidential preference primary, or on January 1, 2013, if
 405 approved by the voters at the 2012 general election.
 406

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407 (4) The State Constitution provides for the automatic
408 repeal of the provisions that provide a general limit on annual
409 increases in the assessed value of nonhomestead properties for
410 the purposes of property taxes. This amendment delays until 2023
411 the repeal of those provisions, which is currently scheduled to
412 occur in 2019.

Ideas in Action is a public forum to present discussion in vital issues affecting the economy, public policy, and concerns that touch the lives of many Floridians. The opinions expressed in this Ideas in Action are those of the authors and do not necessarily reflect those held by the members, staff, or the distinguished Board of Trustees of Florida TaxWatch.

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When Good Policies Go Bad:

Unintended Economic Consequences of Assessment Caps

by Todd D. Jones

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The 1992 Save Our Homes amendment to the Florida constitution was intended to prevent local governments from taxing people out of their homes by limiting annual assessment increases to three-percent or CPI, whichever is lower: a noble public policy that has accomplished its goal. In hindsight, however, most Floridians today acknowledge that the Save Our Homes amendment has resulted in sometimes dramatically disproportionate tax burdens among home owners: clearly, an unintended consequence of what has come to be regarded as a flawed policy.

In 2008, the voters expanded the policy to include non-homestead properties because business interests convinced the Tax and Budget Reform Commission that they carried a disproportionate share of the overall property tax burden; Constitutional Amendment 1 set an annual ten-percent assessment increase limit for non-homestead property. And, if approved by voters in November 2010, Amendment 3 will reduce that ten-percent limitation to five-percent, potentially crippling Florida's economic future in much the same way that Proposition 13 has contributed to the near bankrupting of the State of California.

In 2008, the Lincoln Institute of Land Policy released

a report entitled Property Tax Assessment Limits: Lessons from Thirty Years of Experience. Authors Haveman and Sexton provide numerous examples of legislative actions and the resulting outcomes of property tax reform efforts nationwide. Their research demonstrates that setting limits on assessed values is a deeply flawed approach to offsetting rising property taxes. While assessment caps are proffered as a straightforward strategy for reducing tax bills and slowing the shift in tax burdens to residential property, they often result in higher taxes for the homeowners they are intended to assist, and they can cause unpredictable and unanticipated shifts in tax liabilities. As we already know from Florida's experience with Save Our Homes, by severing the connection between property values and property taxes, assessment limits impose disproportionate tax obligations on the owners of otherwise identical properties, reduce economic growth by distorting taxpayer decision making, and greatly reduce the transparency and accountability of the property tax system as a whole, which contributes to the public's continued ire.

Based on their research, Haveman and Sexton propose alternatives to assessment caps, most of which Florida already enjoys:

- Florida's TRIM notice is a truth-in-taxation measure which lowers the likelihood of unseen tax increases when property values rise but nominal tax rates stay the same.
- Florida law provides for partial exemptions on owner-occupied or homestead properties benefiting residential taxpayers without distorting the market value tax base.
- Florida law has some deferral options that allow taxpayers to delay property tax payments and remain in their homes.
- Havemand and Sexton would argue that Florida needs a robust circuit breaker program to reduce taxes that rise above a certain level of affordability, thus targeting assistance to those whose tax liabilities are out of proportion to their ability to pay.

In 2006, Standard & Poor's published two Public Finance reports on the potential credit rating implications for state and local government stemming from a similar property tax reform proposal in Texas. Some of the concerns expressed in the reports include:

"Appraisal caps have the potential to negatively affect credit quality by impacting an issuer's ability to support their debt..."

"We believe that tax caps will have an impact on the ability of state and local governments to finance capital programs and infrastructure needs and meet their day-to-day operations. Regarding capital improvement plans, municipalities could become more reactive rather than proactive in planning infrastructure and facility needs based on funding availability."

"One of the main strengths of having a higher property appraisal cap is that there is a direct correlation between economic growth and a government's ability to benefit from that growth through taxation. Tax abatement is one of the main incentives that municipalities can offer companies in the region. If appraisal caps are put in place, municipalities won't be able to offer special incentives to keep existing businesses or attract new businesses to the region, as they will be constrained by their revenue sources."

"Local governments have a limited ability to cut operating expenditures since they must provide basic services and infrastructure. If local governments want to meet their infrastructure and basic operational needs, their ability to reap the benefits of economic growth through taxation is perhaps the most important tool in their arsenal."

"Over the long term, limiting this ability could result in budgetary pressures and the accumulation of unmet infrastructure needs," said [S&P credit analyst] Ms. Smaardyk. "Unless alternative revenue sources are put in place to counter the effect of property appraisal caps, the potential for a significant budgetary mismatch remains."

"Again, it is our belief that the implementation of a cap on the growth of property appraisals without a more comprehensive tax reform that addresses all sides of the budget equation could lead to fiscal stress and budgetary pressures that might potentially harm credit quality."

"As with other fiscal challenges, the effect on credit quality will be evaluated on a case-by-case basis," added Ms. Smaardyk. "The big question is whether or not local governments will be able to rise to the occasion and successfully address the budgetary challenges facing them."

In a 1998 paper entitled *The Continuing Redistribution of Fiscal Stress: The Long Run Consequences of Proposition 13*, prepared for the Lincoln Institute of Land Policy, professor Jeffrey Chapman of Arizona State University also demonstrates that local governments' fiscal autonomy is critical to ensure a vital local economy and that assessment limitations undermine that autonomy.

From a practical standpoint, all one needs to do is study California's economy to see Florida's potential future if assessment caps are maintained. The enactment of Proposition 13 in 1978 has forced California's state and local governments to enact and rely on some of the nation's highest sales and personal income tax rates to fund government operations. Sales and income taxes

actually exacerbate the situation because they fluctuate in synch with the economic climate; in boom times, they generate large revenue surpluses, and in recessionary periods they dry up and huge deficits are experienced.

In Florida, what the proponents of Save Our Homes failed to understand was that, once homeowners accumulated a substantial portion of sheltered equity in their homesteads, they would become disinclined to sell. In economic science, this has come to be known as the "lock-in" effect. The lock-in effect was compounded over the last ten years by a dramatic escalation in residential property values. Many homeowners found that they could not afford to relocate, even to a smaller home, because the property tax burden was simply too great; it made the move unaffordable. The lock-in effect of Save Our Homes is what gave political impetus to Florida's relatively new homestead portability laws.

Understanding the lock-in effect on homestead property owners, it is not difficult to comprehend that prudent owners and operators of income producing properties subject to such a cap will adopt a new investment strategy, similar to the one adopted by the beneficiaries of Save Our Homes... long-term hold. The longer an investor holds his property, the greater his competitive advantage. To wit, the following table illustrates the benefits of such a strategy. By year ten, a property originally worth \$10M could enjoy a 34% tax shelter resulting in a \$1.61 per square foot competitive leasing advantage.

The Impact of Assessment Caps										
Year	Growth	Assessor's Market Value	Cap	Taxable Value	Sheltered	Pct	Tax Rate	Property Tax	Competitive Disadvantage	Per SF
1		\$ 10,000,000		\$ 10,000,000	\$ -		2%	\$ 200,000	\$ -	\$ -
2	10%	\$ 11,000,000	5%	\$ 10,500,000	\$ 500,000	5%	2%	\$ 210,000	\$ 10,000	\$ 0.10
3	10%	\$ 12,100,000	5%	\$ 11,025,000	\$ 1,075,000	9%	2%	\$ 220,500	\$ 21,500	\$ 0.22
4	10%	\$ 13,310,000	5%	\$ 11,576,250	\$ 1,733,750	13%	2%	\$ 231,525	\$ 34,675	\$ 0.35
5	10%	\$ 14,641,000	5%	\$ 12,155,063	\$ 2,485,938	17%	2%	\$ 243,101	\$ 49,719	\$ 0.50
6	10%	\$ 16,105,100	5%	\$ 12,762,816	\$ 3,342,284	21%	2%	\$ 255,256	\$ 66,846	\$ 0.67
7	10%	\$ 17,715,610	5%	\$ 13,400,956	\$ 4,314,654	24%	2%	\$ 268,019	\$ 86,293	\$ 0.86
8	10%	\$ 19,487,171	5%	\$ 14,071,004	\$ 5,416,167	28%	2%	\$ 281,420	\$ 108,323	\$ 1.08
9	10%	\$ 21,435,888	5%	\$ 14,774,554	\$ 6,661,334	31%	2%	\$ 295,491	\$ 133,227	\$ 1.33
10	10%	\$ 23,579,477	5%	\$ 15,513,282	\$ 8,066,195	34%	2%	\$ 310,266	\$ 161,324	\$ 1.61
11	10%	\$ 25,937,425	5%	\$ 16,288,946	\$ 9,648,478	37%	2%	\$ 325,779	\$ 192,970	\$ 1.93
12	10%	\$ 28,531,167	5%	\$ 17,103,394	\$ 11,427,773	40%	2%	\$ 342,068	\$ 228,555	\$ 2.29
13	10%	\$ 31,384,284	5%	\$ 17,958,563	\$ 13,425,721	43%	2%	\$ 359,171	\$ 268,514	\$ 2.69
14	10%	\$ 34,522,712	5%	\$ 18,856,491	\$ 15,666,221	45%	2%	\$ 377,130	\$ 313,324	\$ 3.13
15	10%	\$ 37,974,983	5%	\$ 19,799,316	\$ 18,175,667	48%	2%	\$ 395,986	\$ 363,513	\$ 3.64
16	10%	\$ 41,772,482	5%	\$ 20,789,282	\$ 20,983,200	50%	2%	\$ 415,786	\$ 419,664	\$ 4.20
17	10%	\$ 45,949,730	5%	\$ 21,828,746	\$ 24,120,984	52%	2%	\$ 436,575	\$ 482,420	\$ 4.82
18	10%	\$ 50,544,703	5%	\$ 22,920,183	\$ 27,624,520	55%	2%	\$ 458,404	\$ 552,490	\$ 5.52
19	10%	\$ 55,599,173	5%	\$ 24,066,192	\$ 31,532,981	57%	2%	\$ 481,324	\$ 630,660	\$ 6.31
20	10%	\$ 61,159,090	5%	\$ 25,269,502	\$ 35,889,588	59%	2%	\$ 505,390	\$ 717,792	\$ 7.18
21	10%	\$ 67,274,999	5%	\$ 26,532,977	\$ 40,742,022	61%	2%	\$ 530,660	\$ 814,840	\$ 8.15
22	10%	\$ 74,002,499	5%	\$ 27,859,626	\$ 46,142,874	62%	2%	\$ 557,193	\$ 922,857	\$ 9.23
23	10%	\$ 81,402,749	5%	\$ 29,252,607	\$ 52,150,142	64%	2%	\$ 585,052	\$ 1,043,003	\$ 10.43
24	10%	\$ 89,543,024	5%	\$ 30,715,238	\$ 58,827,787	66%	2%	\$ 614,305	\$ 1,176,556	\$ 11.77
25	10%	\$ 98,497,327	5%	\$ 32,250,999	\$ 66,246,327	67%	2%	\$ 645,020	\$ 1,324,927	\$ 13.25

Table 1

Assessment limitations create a significant inducement for property owners to invest for the long term, because they create a barrier to entry in an already extremely competitive marketplace.

By way of example, imagine two identical office buildings erected adjacent to one another in the very same year. Imagine also that they are fully tenanted at competitive lease terms with similar creditworthiness. Under these conditions, the taxable value should be the same for each.

Now assume ten years has passed and one of the buildings is sold for its current market value. Under the proposed amendment, the new owner would lose previous cap protection and be taxed based on current market value. The new owner is faced with an imposing competitive disadvantage. To account for this in underwriting the purchase, a prudent analyst would (1) decrease projected achievable rents by the amount of the competitive disadvantage on a per square foot basis, (2) factor in a higher vacancy and collections loss in anticipation of tenant turnover resulting from the associated increase in pass-through expenses, (3) increase the projected real estate tax liability expense as a result of the sale, and (4) increase the discount rate to reflect the additional market risk. All of this contributes to downward pressure on profit margins and therefore on the property's value.

These facts lead us to the inescapable second step that any prudent investor will undertake: the implementation of net leases. In order to maximize the income-producing asset's value, operators will pass-through all expenses that the market will bear. And while this is common practice in many markets, especially for office, retail, and industrial properties, multifamily apartment community operators would be inclined to convert traditionally gross leases to a net format. Like separately metered utilities, renters could become responsible for paying their pro rata share of the property taxes.

Preliminary comparative analyses based on Table 1 indicate that the impact on value will be considerable. Discounted cash flow models of gross rent properties (e.g. full service leases with no expense pass-through provisions, like apartments) evidence value declines of greater than eleven percent when underwritten in this manner. Otherwise comparable net leased property analyses reveal declines of over six percent of market value.

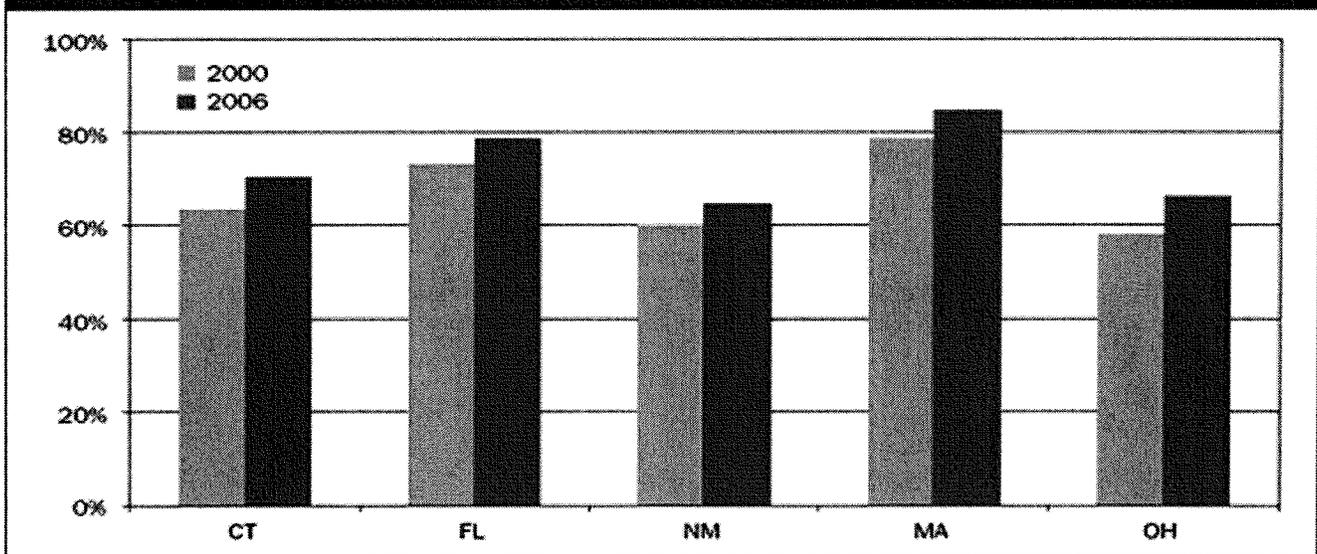
Such dramatic devaluation on ownership transfers also presents a threshold barrier to renovation and new construction and development activities. Significant renovation could subject a property to reassessment under current law. Any new product would be valued at its current market value in the year it came into service, yet it would have to compete for tenants against existing properties which could offer space at significantly lower rental rates. On the other hand, the five percent assessment cap could potentially solve Florida's historic overbuilding problem, because no new development will occur until demand exceeds supply by an amount sufficient to offset the competitive disadvantage that the new properties will face.

As a result, employment and compensation levels for all jobs that revolve around commercial real estate transactions will be negatively impacted. As transaction volume wanes, the demand for appraisers, attorneys, brokers, lenders, title agents and the like will vanish as well. Given Florida's historical reliance on real estate development and transactional activity for economic development, the five-percent cap could be the harbinger of Florida's economic demise.

As evidenced in a chart from the previously referenced Lincoln Institute of Land Policy report, the assessment limitations on non-homestead property shifts the tax burden back towards homeowners, who already shoulder the overwhelming majority of the load.

FIGURE 4

Residential Share of Total Assessed Value in Selected States, 2000–2006



Source: State departments of revenue or taxation.

Despite that Florida's income producing property owners actually write the checks, most economists would argue that the ultimate end user of the property actually pays the taxes. That means that the retail shopper and the clients of office or industrial tenants are the ones who pay the tax, because the costs are passed through to the ultimate end user. And although Florida's tourists contribute their fair share, most of the end users of non-homestead property in Florida are its residents. In the end, assessment limitations deliver:

- lower tax revenues for local government,
- lower municipal bond credit ratings,
- local governments that are hamstrung in adapting to changing economic conditions,
- greater reliance on other types of taxes,
- an unnecessarily complicated system for taxpayers,
- reduced real estate transaction activity,
- fewer jobs and lower compensation for transaction facilitators, and
- they are an impediment to a vibrant economy.

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