

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/CS/CS/HJR 381

**FINAL HOUSE FLOOR ACTION:**

105 Y's 11 N's

**SPONSOR:** Rep. Dorworth & Others

**GOVERNOR'S ACTION:**

Not Applicable

**COMPANION BILLS:** CS/CS/SJR 658

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## SUMMARY ANALYSIS

CS/CS/CS/CS/CS/HJR 381 was passed by the House of Representatives on May 2, 2011. The Senate passed the joint resolution on May 4, 2011.

The joint resolution places a constitutional amendment on the ballot in November, 2012. A related bill to place the amendment on the ballot in an earlier special election did not pass. If approved by the voters, the proposed amendment would do several things related to property taxes:

### ***Non-Homestead Assessment Limitation***

The proposed amendment would reduce the current limitation on annual growth in the assessed value of certain non-homestead property from 10 percent to 5 percent. The January 1, 2019, constitutional sunset of the non-homestead assessment limitation is delayed until 2023.

### ***Prohibition of Increases in Assessed Value Where Market Value Has Declined***

The proposed amendment would also allow the Legislature by general law to prohibit increases in the assessed value of homestead property and certain non-homestead property in any year where the market value of the property decreases. If implemented by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of a property decreases.

If approved by the voters with the 2012 presidential preference primary, the above two provisions will take effect on January 1, 2012. If approved by the voters with the 2012 general election, they will take effect on January 1, 2013.

### ***Additional Homestead Exemption for "First-Time" Homesteaders***

The proposed amendment would allow individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution, and have not received a homestead exemption in the previous three calendar years to receive an additional temporary homestead exemption. The additional exemption is equal to 50 percent of the just value of the homestead property, capped at the median just value for homestead property in the county where the property is located. This exemption applies only to non-school property taxes. The exemption is reduced each year and diminishes to zero in five years or less.

If approved by the voters in the 2012 presidential preference primary, this provision takes effect on January 1, 2012. If approved by the voters with the 2012 general election, the provision takes effect on January 1, 2013.

If approved by the voters, the proposed amendment will have a significant negative impact on non-school tax bases and possibly revenues. See the FISCAL IMPACT section of this analysis for additional information.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Just Value

Section 4, Art. VII of the State Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer would pay a willing seller for property in an arm’s length transaction.<sup>1</sup>

##### Assessed Value

The State Constitution authorizes certain alternatives to the just valuation standard for specific types of property.<sup>2</sup> 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 character or use.<sup>3</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>4</sup> Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value be or totally exempted from taxation.<sup>5</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> Certain working waterfront property is assessed based upon the property’s current use.<sup>9</sup>

##### Taxable Value

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

##### Save Our Homes

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<sup>1</sup> Section 193.011, F.S. *See, also, Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>2</sup> The constitutional provisions in s. 4, Art. VII of the State Constitution, are implemented in Part II of ch. 193, F.S.

<sup>3</sup> Section 4(a), Art. VII of the State Constitution.

<sup>4</sup> Section 4(b), Art. VII of the State Constitution.

<sup>5</sup> Section 4(c), Art. VII of the State Constitution.

<sup>6</sup> Section 4(e), Art. VII of the State Constitution.

<sup>7</sup> Section 4(f), Art. VII of the State Constitution.

<sup>8</sup> Section 4(i), Art. VII of the State Constitution.

<sup>9</sup> Section 4(j), Art. VII of the State Constitution.

The “Save Our Homes” provision in s. 4, Art. VII of the State Constitution limits the amount a homestead’s assessed value can increase annually to the lesser of three percent or the inflation rate as measured by the Consumer Price Index (CPI).<sup>10</sup> Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to that homestead.<sup>11</sup>

### Section 193.155, Florida Statutes

In 1994, the Legislature implemented the “Save Our Homes” amendment in s. 193.155, F.S.<sup>12</sup> The legislation required all homestead property to be assessed at just value by January 1, 1994.<sup>13</sup> Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lesser of three percent or the growth in the CPI. Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds its just value, the assessed value must be lowered to the just value of the property.

### Rule 12D-8.0062, Florida Administrative Code: “The Recapture Rule”

In October 1995, the Governor and the Cabinet, acting as the head of the Department of Revenue, adopted Rule 12D-8.0062, F.A.C., entitled “Assessments; Homestead; and Limitations.”<sup>14</sup> The rule “govern[s] the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, Section 4(c), Florida Constitution and Section 193.155, F.S.”<sup>15</sup>

Subsection (5) of the rule is popularly known as the “recapture rule.” This subsection requires property appraisers to increase the assessed value of a homestead property by the lower of three percent or the CPI on all property where the prior year’s assessed value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., provides:

Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year’s assessed value ....<sup>16</sup>

Currently, 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”

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<sup>10</sup> Section 4(d), Art. VII of the State Constitution.

<sup>11</sup> Section 4(d), Art. VII of the State Constitution.

<sup>12</sup> Chapter 94-353, L.O.F.

<sup>13</sup> *See, Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994), “the clear language of the amendment establishes January 1, 1994, as the first “just value” assessment date, and as a result, requires the operative date of the amendment’s limitations, which establish the “tax value” of homestead property, to be January 1, 1995.”

<sup>14</sup> While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, 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.

<sup>15</sup> Rule 12D-8.0062(1), F.A.C.

<sup>16</sup> Rule 12D-8.0062(5), F.A.C.

cap whose property is assessed at less than just value may see an increase in the assessed value of their home in years where the just/market value of their property has decreased.

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

### Markham v. Department of Revenue<sup>17</sup>

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."<sup>18</sup> 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 movement<sup>19</sup> should be incorporated into the language of the rule to make it compatible with the language in s. 4(c), Art. VII of the State 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 s. 4(c), Art. VII of the State 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.<sup>20</sup>

### Additional Assessment Limitations

Sections 4(g) and (h), Art. VII of the State Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. 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, 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 is assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law. Section 27, Art. XII of the State Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) 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.

### Homestead Exemption

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<sup>17</sup> *Markham v. Department of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ 21, 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."

<sup>20</sup> *Id.* at ¶ 20.

Section 6, Art. VII of the State Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to a homesteads' assessed value between \$50,000 and \$75,000, excluding school district levies.

### Other Exemptions

Section 3, Art. VII of the State 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.<sup>21</sup> Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.<sup>22</sup> 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.<sup>23</sup> A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.<sup>24</sup> Tangible personal property is exempt up to \$25,000 of its assessed value.<sup>25</sup> There is an exemption for real property dedicated in perpetuity for conservation purposes.<sup>26</sup> 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.<sup>27</sup>

### **Effect of Proposed Changes**

The joint resolution places a constitutional amendment on the ballot in November, 2012. A related bill to place the amendment on the ballot in an earlier special election did not pass. If approved by the voters, the proposed amendment would do several things related to property taxes:

#### Non-Homestead Assessment Limitation

The proposed amendment would amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII of the State Constitution, to reduce the annual assessment limitation on certain non-homestead property from 10 percent to 5 percent.

#### Prohibition of Increases in Assessed Value Where Market Value Has Declined

The proposed amendment would amend s. 4, Art. VII, State Constitution, to allow the Legislature by general law to prohibit increases in the assessed value of a homestead property

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<sup>21</sup> Section 3(a), Art. VII of the State Constitution.

<sup>22</sup> Section 3(b), Art. VII of the State Constitution.

<sup>23</sup> Section 3(c), Art. VII of the State Constitution.

<sup>24</sup> Section 3(d), Art. VII of the State Constitution.

<sup>25</sup> Section 3(e), Art. VII of the State Constitution.

<sup>26</sup> Section 3(f), Art. VII of the State Constitution.

<sup>27</sup> Section 3(g), Art. VII of the State Constitution.

and certain non-homestead property, in any year where the market value of the property decreases.<sup>28</sup>

If approved by the voters with the 2012 presidential preference primary, the above two provisions will take effect on January 1, 2012. If approved by the voters with the 2012 general election, these provisions will take effect on January 1, 2013.

#### Additional Homestead Exemption for “First-Time” Homesteaders

The proposed amendment would also create subsection (f) in s. 6, Art. VII of the State Constitution. This would allow individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution, and have not received a homestead exemption in the previous three calendar years, to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property on January 1 of the year the homestead is established, capped at the median just value for homestead property in the county where the property at issue is located. The additional exemption applies to all property taxes other than school district taxes. The exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the difference between the just value and the assessed value of the property as determined under Florida’s “Save Our Homes” provisions.

If approved by the voters with the 2012 presidential preference primary, these provisions take effect on January 1, 2012, and are available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, the provisions take effect on January 1, 2013, and are available for properties purchased on or after January 1, 2012.

#### Repeal Provisions

The proposed amendment would correct references in s. 27, Art. XII of the State Constitution, and would delay the repeal of subsections (g) and (h) of s. 4, Art. VII of the State Constitution, effective January 1, 2019.<sup>29,30</sup>

#### Non-substantive Revisions

The proposed amendment would also make non-substantive technical revisions to s. 4 and s. 6, Art. VII of the State Constitution.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>28</sup> The assessed value of such properties could still increase for unrelated reasons, such as an increase in just value due to improvements made to the homestead property. *See*, s. 4(d)(5), Art. VII of the State Constitution.

<sup>29</sup> Section (4)(g) and (h), Art. VII of the State Constitution, contain the current 10 percent annual assessment limitation on specified non-homestead property.

<sup>30</sup> Section (4)(f), Art. VII of the State Constitution, allows a county to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner’s spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. The constitution currently provides that this provision is scheduled to sunset along with the 10 percent assessment limitation on residential non-homestead property. This is inadvertent and is corrected by the amendment proposed by this joint resolution.

**1. Revenues:**

None.

**2. Expenditures:**

Section 5(d), Art. XI of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 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 department estimated the full publication costs for advertising the joint resolution to be \$306,107.76.<sup>31</sup> The final wording of the joint resolution has changed since the Department of State estimated this cost, but the difference in the final cost is not expected to be significant.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

Implementation in 2013

The Revenue Estimating Conference (REC) estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit, would have a negative impact on non-school tax bases. Assuming current millage rates, the negative revenue impact on non-school property taxes is estimated to be \$118.1 million in FY 2013-14, growing to \$406.5 million by FY 2015-16.

The REC also estimated that the provisions of the constitutional amendment, relating to the first-time homesteader provision, would have a negative impact on non-school tax bases. Assuming current millage rates, the negative revenue impact on non-school property taxes is estimated to be \$38.1 million in FY 2013-14, with a recurring negative impact of \$159.3 million.

The REC estimated that the prohibition of increases in assessments when market value declines, if implemented by the Legislature and effective in 2013, would have a negative effect on local government property tax bases. Assuming current millage rates, the negative impact on non-school property taxes is estimated to be \$10.3 million in FY 2013-14 and \$32.5 million recurring. The negative impact on school property taxes is estimated to be \$6.2 million in FY 2013-14 and \$17.7 million recurring.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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<sup>31</sup> Department of State, *House Joint Resolution 381 (2011) Fiscal Analysis* (March 17, 2011).

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings, and would not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10 percent to 5 percent.

Purchasers of residential properties who have not received a homestead exemption in the past three calendar years would be eligible for an additional homestead exemption for a period of up to five years.

To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties would increase to offset these tax losses.

New properties or properties that have changed ownership or undergone significant improvements would be assessed at just value, and may pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

#### **D. FISCAL COMMENTS:**

The constitutional amendment proposed by the joint resolution provides an additional homestead exemption for "first-time" homesteaders equal to 50 percent of the just value of the property, capped at the median just value of the homestead property in the county where the property at issue is located. Estimated median homestead just values for 2011 vary from \$301,268 in Monroe County to \$40,723 in Dixie County. Thus, depending on where a homestead property is located, a property may be eligible for an initial additional exemption of approximately \$40,000 to \$300,000.