

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 789 Homestead Exemption/Senior Citizens
SPONSOR(S): Community & Military Affairs Subcommittee, Nuñez and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Morton	Hoagland
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The joint resolution proposes an amendment to the state constitution that would allow counties and municipalities to base ad valorem tax assessments on the previous year's assessed value of homestead property qualifying for the low-income senior exemption.

To be eligible for cap on assessment, the just value of the property could not exceed 150% of the average just value of residential property within the county. The joint resolution provides that a state agency designated by law will calculate the average just value of residential property based on the final tax roll for each county annually.

The joint resolution would have a nonrecurring fiscal impact on the state for the cost of advertising the proposed amendment.

The joint resolution must approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem – or property – taxes. Special districts may also be given this ability by law.¹ Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the state constitution as follows:²

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments and are fixed by ordinance or resolution of the taxing authority's governing body.³

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.⁴

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation. Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.⁵

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.⁶ The requirement for uniformity does not prohibit “proper and reasonable classifications of property for purposes of municipal taxation, so long as such classifications are not arbitrary, unreasonable, and unjustly discriminating, and apply similarly to all under like conditions, and do not violate any other provision of the organic law.”⁷

The Florida Constitution grants property tax relief in the form of valuation differentials,⁸ assessment limitations,⁹ and exemptions,¹⁰ including the homestead exemptions.

¹ Section 9, Art. VII, Fla. Const.

² A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of taxable value.

³ Section 200.001(7), F.S.

⁴ Section 197.383, F.S.

⁵ Chapter 195, F.S.

⁶ Article VII, s. 2, Fla. Const. *See also*,

⁷ *Hayes v. Walker*, 54 Fla. 163 (Fla.1907).

⁸ Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property.

⁹ Article VII, s. 4(c) of the Florida Constitution, authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section

Homestead Exemption

The Homestead Exemption provides an exemption from all ad valorem taxes on the first \$25,000 of assessed value for owners of homestead property, provided that the tax roll in their county has been approved.¹¹ An additional \$25,000 exemption is provided for assessed values between \$50,000 and \$75,000; however, this exemption does not apply to school taxes.¹²

Low-Income Seniors

Local governments may allow an additional homestead exemption of up to \$50,000 for anyone 65 years or older whose household income does not exceed \$20,000, adjusted annually by the percentage change in the average cost-of-living index.¹³ The exemption only applies to taxes levied by the county or city enacting the exemption.¹⁴

Under the Homestead Property Tax Deferral Act, any homesteader 65 years or older who would qualify for the exemption would also qualify to defer all ad valorem taxes.¹⁵ All senior homesteaders may defer the portion of their tax levy exceeding 3-percent of household income, so long as tax deferrals and other liens do not exceed 85-percent of assessed value and the primary mortgage does not exceed 70 percent. Deferred tax and interest up to 7 percent are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

Proposed Changes

The joint resolution proposes an amendment to the state constitution that would allow counties and municipalities to base ad valorem tax assessments on the previous year's assessed value of homestead property qualifying for the low-income senior exemption.

To be eligible for cap on assessment, the following conditions must be met:

- The property qualifies for the low-income senior exemption, which requires:
 - The county or municipality has granted the exemption by ordinance
 - The person has title to the property and maintains his or her permanent residence thereon
 - The owner is 65 or older
 - The owner's annual household income is less than \$26,203.
- The just value of the property is no more than 150% of the average just value of residential property within the county.

The joint resolution provides that a state agency designated by law will calculate the average just value of residential property based on the final tax roll for each county annually.

4(e) authorizes counties 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. This provision is known as the "Granny Flats" assessment limitation.

¹⁰ Article VII, s. 3 of the Florida Constitution, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

¹¹ Section 6, Art. VII, Fla. Const.

¹² *Id.* See also Am. C.S. for S.J.R. 2-D, 2007.

¹³ Section 6, Art. VII, Fla. Const. See also s. 196.075, F.S.

¹⁴ Section 196.075(4), F.S.

¹⁵ Section 197.243, F.S.

STORAGE NAME: h0789a.CMAS

DATE: 4/6/2011

PAGE: 3

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The Division estimates the cost of advertising the proposed constitutional amendment would be \$113,463.66.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated the potential impact of this resolution, should it pass. However, the amendment, if passed, would only affect a county or municipality that chose to impose the cap on assessed value for its assessment..

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The resolution could reduce property taxes on certain seniors. Such a reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.

D. FISCAL COMMENTS:

The resolution would have a nonrecurring fiscal impact on the state for the cost of advertising the proposed amendment.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to Joint Resolutions.

2. Other:

Legislative Proposed Amendments

Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths 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's office or may be placed at a special election held for that purpose.

Self Executing Provisions

Some constitutional provisions require legislative enactment in order to be effective. Others, labeled self-executing, are immediately effective. The basic test is “whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment. If the provision lays down a sufficient rule, it speaks for the entire people and is self-executing.”¹⁶

The amendment proposed by the joint resolution would allow a county or municipality to “choose to limit” its assessment of the value of certain property to the previous year’s assessment. It provides that a state agency, “designated by law” shall calculate the average just value of residential property in each county annually.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Method of Implementation

The constitutional amendment proposed by the joint resolution states that a county or municipality “may choose” to limit the assessed value, but does not specify how this choice would be implemented. Similar provisions in the state constitution state the method of implementation as “by ordinance” or “in the manner prescribed by general law.”

Limit on Assessment

The constitutional amendment proposed by the joint resolution allows a county or municipality to choose to “limit its assessment of the value of the property ... to the assessed value of the property in the prior year,” subject to eligibility requirements.

It may be possible to interpret the language such that the prior year’s assessed value is used regardless of whether the prior year’s assessment was less than or more than the current year’s assessed value. However, the ballot statement provides that the proposed amendment authorizes counties and municipalities to grant an “ad valorem tax benefit” by allowing them to “freeze the assessed value of the homesteads.”

‘Residential Property’

The Department of Revenue makes the following comment:

If the intent of the bill is to include residential property that consists of one primary living unit, but not limited to single-family residences, condominiums, cooperatives, and mobile homes into the average just value of residential property calculation, the sponsor may wish to provide a definition for what should be included as ‘residential property.’

We recommend defining the term ‘residential property.’ The sponsor may wish to use the description provided in s. 195.096(3)(a)(1), F.S.:

“Residential property that consists of one primary living unit, including but not limited to, single-family residences, condominiums, cooperatives and mobile homes.”

An alternative approach is taken by art. VII, s. 6, Fla. Const., which refers to “residential unit”: “Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.”

¹⁶ *Gray v. Bryant*, 125 So.2d 846, 851 (Fla.1960).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Community & Military Affairs Subcommittee adopted a strike-all amendment and reported the joint resolution favorably as a committee substitute.

The joint resolution, as filed, differed from the committee substitute, in that, as filed, the resolution would have allowed counties to exempt homestead property of senior citizens meeting certain age and income requirements from increases in the combined amount of ad valorem taxes levied by the county, school district, municipalities, water management district and any other special district in the county.