

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 973 Homestead Property/Liens
SPONSOR(S): Seiler
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>13 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
3) <u>Judiciary</u>	<u></u>	<u>Jaroslav</u>	<u>Havlicak</u>
4) <u>Commerce</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This joint resolution amends the Florida Constitution to provide that a lien may be placed on the equity of homestead property to the extent the equity exceeds \$1 million. The amendment also authorizes the Legislature to provide, by general law, for the forced sale of homestead property obtained fraudulently or with unlawfully obtained assets.

This joint resolution was submitted for review by the Impact Conference which has not yet considered its fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0973d.ju.doc
DATE: April 21, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This joint resolution amends the state constitution to provide that a lien may be placed on the equity of homestead property to the extent the equity exceeds \$1 million. The amendment also authorizes the Legislature to provide, by general law, the forced sale of homestead property obtained fraudulently or with unlawfully obtained assets.

Constitutional Amendment Process

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.¹ The joint resolution requires passage by a three-fifths vote by each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by the electors, it becomes effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

Homestead & Homestead Exemption

The meaning of the word “homestead” signifies the place where the owner and his family reside, the place where the home is, or the house, and adjoining land, where the family dwells. In a legal sense, it means that property that is occupied as a home or dwelling by two or more persons living together in a family relationship.²

Originally, the homestead exemption was intended to protect the family home and the realty upon which the dwelling was located. Homestead laws are founded upon considerations of public policy, their purpose being to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune. In other words, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home so that the householder and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have extended credit under such law. The laws are intended to secure to the householder a home for himself and family, regardless of his financial condition--whether he is solvent or insolvent--without reference to the number of his creditors, and without any special regard to the extent of the estate or title by which the homestead property may be owned. The laws are not based on the principles of equity; nor do they in any way yield thereto; their

¹ See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

² See 28A FLA. JUR. 2D HOMESTEADS § 1.

purpose is to secure the home to the family even at the sacrifice of just demands, the preservation of the home being deemed of paramount importance; the family is to be protected from destitution and want. A citizen's right to homestead protection under the Florida Constitution is considered a paramount rule of public policy that would justify departure from an otherwise applicable rule of comity. However, the homestead protection guaranteed by State Constitution should not be used to shield fraud or reprehensible conduct

Article X, Section 4 of the Florida Constitution provides certain homestead exemptions as follows.

a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

Homestead Exemption and Former WorldCom CFO

WorldCom, Inc., one of the largest telecommunication companies, filed for federal Chapter 11 bankruptcy protection in February, 2003. The bankruptcy is the result of an approximate \$10 billion alleged accounting fraud which included listing company debt as capital investments in order to enhance the company's "bottom line."

WorldCom's former chief financial officer, Scott Sullivan, who was indicted and has recently plead not guilty to securities fraud charges, and who has been sued by his former employer, owns a sizeable estate in Boca Raton. The estate, situated on 4.3 acres, contains a main house of approximately 19,000 square feet of living space containing six bedrooms and twelve bathrooms, overlooks a 70 acre private lake. Another four bedrooms are contained in out buildings. Questions concerning the possible sheltering of fraudulently or unlawfully gained funds under a homestead exemption have arisen in light of the WorldCom accounting scandal and the criminal and civil proceedings pending against Sullivan.

C. SECTION DIRECTORY:

N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This joint resolution has been submitted to the Impact Conference for review.

2. Expenditures:

This joint resolution has been submitted to the Impact Conference for review.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This joint resolution has been submitted to the Impact Conference for review.

2. Expenditures:

This joint resolution has been submitted to the Impact Conference for review.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution has been submitted to the Impact Conference for review.

D. FISCAL COMMENTS:

This joint resolution has been submitted to the Impact Conference for review.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

By its own terms, the constitutional qualified prohibition against imposing legislative mandates to expend funds on local governments applies only to "general law," not to resolutions proposing amendments to the Florida Constitution.³ However, even if the prohibition did apply, this joint resolution does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³ See Art. VIII, s. 18, Fla. Const.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 10, 2003, the House Subcommittee on Local Affairs recommended this joint resolution favorably without amendment.

On April 18, 2003, the House Committee on Local Government & Veterans' Affairs reported this joint resolution favorably without amendment.