

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 1163

**FINAL HOUSE FLOOR ACTION:**

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**SPONSOR:** Rep. Dorworth & Rep. Bovo

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/SB 1722

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### **SUMMARY ANALYSIS**

CS/CS/CS/HB 1163 was passed by the House on May 2, 2011 and by the Senate on May 4, 2011. The bill was approved by the Governor on June 2, 2011, Chapter 2011-125, Laws of Florida.

The bill implements the proposed constitutional amendment contained in CS/CS/CS/CS/CS/HJR 381. Substantive provisions of the bill become effective upon approval of the amendment by the voters.

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

The bill amends Florida Statutes to reflect the provisions of CS/CS/CS/CS/CS/HJR 381 that would reduce the current limitation on annual growth in assessment value on certain non-homestead property from 10 percent to five percent. If approved by the voters with 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. A bill to submit the question to the voters in a special election did not pass.

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

The bill would create a new statutory section that sets forth the requirements contained in CS/CS/CS/CS/CS/HJR 381 allowing 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. The additional exemption would be 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 subject 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. The bill provides for an application process for the exemption and sets forth requirements that must be met in order to retain the exemption upon addition of another person to the title of an affected property. If approved by the voters with the 2012 presidential preference primary, this provision takes effect on January 1, 2012, and is available for properties purchased on or after January 1, 2012. If approved by the voters at the 2012 general election, the provision takes effect on January 1, 2013, and is available for properties purchased on or after January 1, 2012.

#### ***Consideration of Appropriations for Fiscally-Constrained Counties***

Beginning with the 2012-13 fiscal year the bill would also require the Legislature to consider appropriating funds to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties as a direct result of the provisions of CS/CS/CS/CS/CS/HJR 381.

Additionally, the bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

This bill will have a significant negative impact on non-school property tax bases and possibly revenues, if the amendment proposed by CS/CS/CS/CS/CS/HJR 381 is approved by the voters. 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 the 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 or be 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

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

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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.

rate as measured by the Consumer Price Index.<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 the new homestead.<sup>11</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

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 greater than \$50,000 and up to \$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>12</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>13</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>14</sup> A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.<sup>15</sup> Tangible personal property is exempt up to \$25,000 of its assessed value.<sup>16</sup> There is an

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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> Section 3(a) , Art. VII of the State Constitution.

<sup>13</sup> Section 3(b), Art. VII of the State Constitution.

<sup>14</sup> Section 3(c), Art. VII of the State Constitution.

<sup>15</sup> Section 3(d), Art. VII of the State Constitution.

<sup>16</sup> Section 3(e), Art. VII of the State Constitution.

exemption for real property dedicated in perpetuity for conservation purposes.<sup>17</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>18</sup>

### Fiscally Constrained Counties

Section 218.67, F.S., defines a fiscally constrained county as a county that is entirely within a rural area of critical economic concern as designated by the Governor, or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the previous July 1 certified taxable value. Fiscally constrained counties include Baker, Holmes, Bradford, Jackson, Calhoun, Jefferson, Columbia, Lafayette, DeSoto, Levy, Dixie, Liberty, Franklin, Madison, Gadsden, Okeechobee, Gilchrist, Putnam, Glades, Sumter, Gulf, Suwannee, Hamilton, Taylor, Hardee, Union, Hendry, Wakulla, Highlands and Washington.<sup>19</sup>

Currently, the Legislature is required to appropriate funds to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties which occur as a direct result of implementation of the revisions to Art. VII of the State Constitution approved in 2008. These moneys are distributed in January of each fiscal year among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue.<sup>20</sup>

### **Effect of Proposed Changes**

CS/CS/CS/HB 1163 would implement the constitutional amendments proposed by CS/CS/CS/CS/CS/HJR 381, if approved by the voters. Substantive provisions of the bill become effective upon approval of those amendments by the voters. The bill provides contingent language to become effective, whether voted on and approved with the 2012 presidential preference primary or the 2012 general election.

Upon voter approval, CS/CS/CS/CS/CS/HJR 381 would reduce from 10 percent to five percent, the current limitation on annual limitation on growth in the assessed value of certain non-homestead property. Additionally, CS/CS/CS/CS/CS/HJR 381 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. The additional exemption would be 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 subject property is located. The additional exemption will apply 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.

### Non-Homestead Assessment Limitation

The bill would amend ss. 193.1544 and 193.1555, F.S., to replace the current 10 percent annual limitation on growth in assessed value on certain non-homestead property with a five percent limitation. The bill clarifies that the non-homestead assessment limitation does not apply to

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<sup>17</sup> Section 3(f), Art. VII of the State Constitution.

<sup>18</sup> Section 3(g), Art. VII of the State Constitution.

<sup>19</sup> <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2010.pdf>.

<sup>20</sup> Section 218.12, F.S.

improvements made to the property. If approved by the voters with 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.

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

The bill would create s. 196.078, F.S., where it defines “first-time Florida homesteader” as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three calendar years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applies. The new section also sets forth the limitations and requirements of the new exemption as described in CS/CS/CS/CS/CS/HJR 381.

The bill provides a mechanism whereby a person must apply for the exemption with the property appraiser no later than March 1 on a form prescribed by the Department of Revenue. The bill provides that if the amendment contained in CS/CS/CS/CS/CS/HJR 381 is approved by the voters with the 2012 presidential preference primary, that the application date will be June 1 for 2012 only.

The bill provides that in order for the exemption to be retained upon the addition of another person to the title to the property, the additional person must submit, no later than the subsequent March 1, a sworn statement attesting that he or she has not owned property that received the homestead exemption provided in s. 196.031, F.S., in the prior three calendar years.

The bill specifies that ss. 196.131<sup>21</sup> and 196.161,<sup>22</sup> F.S., apply to the “first-time” homesteader exemption.

If approved by the voters with the 2012 presidential preference primary, this provision takes effect on January 1, 2012, and is available for properties purchased on or after January 1, 2012.<sup>23</sup> If approved by the voters at the 2012 general election, the provision takes effect on January 1, 2013, and is available for properties purchased on or after January 1, 2012.

#### Fiscally-Constrained Counties

The bill would provide that, beginning in the 2012-13 fiscal year, the Legislature is required to consider appropriating funds to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties which occur as a direct result of the implementation of the provisions contained in HJR 381 or SJR 658. Any appropriated moneys will be distributed among the fiscally constrained counties based on each county’s proportion of the total reduction in tax revenues.

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<sup>21</sup> Section 196.131, F.S., relates to homestead exemption claims, including requiring the property appraiser to provide a receipt and providing penalties for persons knowingly and willfully giving false information for the purpose of claiming a homestead exemption.

<sup>22</sup> Section 196.161, F.S., provides provisions whereby the property appraiser, under certain circumstances, may place a tax lien on property where a person who was not entitled to a homestead exemption was granted a homestead exemption within the prior 10 years.

On or before February 1 of each year, a fiscally constrained county must apply and provide supporting documentation to the Department of Revenue to participate in the distribution of the appropriation.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

#### **1. Revenues:**

##### Implementation in 2013

The Revenue Estimating Conference (REC) estimated that the provisions of CS/CS/CS/CS/CS/HJR 381 as implemented by this bill, relating to the non-homestead assessment limit, would have a negative impact on non-school property 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 estimated that the provisions of the constitutional amendment as implemented by this bill, relating to the first-time homesteader provision, would also have a negative impact on non-school property 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.

#### **2. Expenditures:**

None.

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

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 five percent.

Purchasers of residential properties who have not received a homestead exemption in the past three 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 that would be implemented by this bill 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.