

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 369 Limitation on Homestead Assessments

**SPONSOR(S):** Roth

**TIED BILLS:** HB 371 **IDEN./SIM. BILLS:** SJR 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Rivera	Miller
2) Ways & Means Committee	17 Y, 0 N	Curry	Langston
3) State Affairs Committee			

### SUMMARY ANALYSIS

Local governments impose and collect ad valorem, or property, taxes on real and tangible personal property within Florida. All property in Florida is subject to taxation and must be assessed at just value unless an exemption or exception is authorized by the State Constitution. Under the homestead exemption, persons with legal and equitable title in real property on which they or their dependent permanently reside may have a portion of the just value of their property exempted from taxation.

A homestead property initially must be assessed at just value, which may only be increased by up to three percent (3%) every year pursuant to the Save Our Homes (SOH) assessment limitation. The accumulated difference between the just value and the assessed value is the SOH benefit. Homestead property owners may transfer the SOH benefit to a new homestead if the new homestead is established by January 1 of the second year subsequent to abandonment of their old homestead.

The joint resolution proposes an amendment to the State Constitution extending the period to transfer the SOH benefit from a prior homestead to a new homestead by an additional year, to the third year subsequent to abandonment of the old homestead.

The Revenue Estimating Conference determined the joint resolution had a zero/negative indeterminate impact because of the need for voter approval. If the constitutional amendment does not pass, the impact is zero. However, if approved, the Revenue Estimating Conference estimated that the joint resolution would reduce local property taxes by \$1.8 million, beginning in FY 2021-2022, eventually growing to an annual reduction of \$10.2 million.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 1, 2021.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.**

**The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation on real and tangible personal property to local governments and prohibits the state from levying ad valorem taxes on such property.<sup>1</sup> The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>2</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes<sup>3</sup> and provides for specified assessment limitations, property classifications and exemptions.<sup>4</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.<sup>5</sup>

##### Property Tax Exemptions

Unless expressly exempted from taxation, all real and personal property and leasehold interests in the state are subject to taxation.<sup>6</sup> The Legislature is without authority to grant an exemption from taxes without a constitutional basis<sup>7</sup> and any modifications to existing ad valorem tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>8</sup> Article VII, sections 3 and 6 of the Florida Constitution, authorize specific tax exemptions, including the Homestead exemption.

##### *Homestead Exemption*

Article VII, section 6 of the Florida 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. This exemption reduces the taxable value of the property used to calculate all ad valorem tax levies, including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.<sup>9</sup> Certain classes of Florida residents may receive additional homestead exemptions including veterans who are 65 years or older,<sup>10</sup> surviving spouses of veterans who died in active duty, and first responders suffering total or permanent disability from injuries sustained while on duty.<sup>11</sup>

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<sup>1</sup> Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> S. 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>3</sup> Art. VII, s. 4, Fla. Const.

<sup>4</sup> Art. VII, ss. 3, 4, and 6, Fla. Const.

<sup>5</sup> S. 196.031, F.S.

<sup>6</sup> S. 196.001, F.S.; *See also Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994), noting exemptions are strictly construed against the party claiming them.

<sup>7</sup> *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978).

<sup>8</sup> *Sebring Airport Auth. V. McIntyre*, 783, So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

<sup>9</sup> Art. VII, s. 6(a), Fla. Const. and s. 196.031, F.S.

<sup>10</sup> Art. VII, s. 6(e), Fla. Const. and s.

<sup>11</sup> Art VII, s. 6(f), Fla. Const. and s. 196.081, F.S.

A property receiving a homestead exemption must be assessed at just value as of January 1 of the year the property receives the exemption, with one exception discussed below, and cannot be assessed at more than just value.<sup>13</sup> The State Constitution limits the amount of change in the assessed value of a homestead property as of each January 1 to the lesser of three percent or the percentage change in the Consumer Price Index (CPI).<sup>14</sup> This cap on the change in the assessed value is called the Save Our Homes (SOH) assessment limitation and the accumulated difference between the assessed value and the just value is the SOH benefit.<sup>15</sup>

If there is a change in ownership<sup>16</sup> and a new homestead is established, the property must be assessed at just value as of January 1 of the year following the change unless the new owner transfers a SOH benefit from a previous homestead to the new homestead.<sup>17</sup> The ability to transfer the SOH benefit is known as portability. A homestead property owner may transfer up to \$500,000 of the SOH benefit to the new homestead if the owner received a homestead exemption as of January 1 in either of the immediately preceding two years.<sup>18</sup> Beginning January 1, 2017, owners of homestead property that was significantly damaged or destroyed as the result of a hurricane or tropical storm may elect to abandon their homestead as of the date of the storm, even if a homestead exemption was received in the following year, and transfer the SOH benefit to a new homestead within two years of the storm.<sup>19</sup>

### Effect of Proposed Changes

HJR 369 proposes an amendment to Article VII, section 4(d), of the Florida Constitution, which would extend the period for a homestead property owner to transfer a prior SOH benefit to a new homestead from two years to three years. Under the new scheme, a homeowner who establishes a new homestead as of January 1 would be able to have the new homestead assessed at less than just value if the homeowner received a prior homestead exemption as of January 1 of any of the immediately preceding three years.

#### B. SECTION DIRECTORY:

Not applicable to joint resolutions.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

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<sup>12</sup> In 1992 and 2008, Florida voters approved amendments to the Florida Constitution known as the Save Our Homes amendments which limited the increase in assessed value of homestead property and allowed the accrued benefit to be transferred to a new homestead property within a two-year timeframe.

<sup>13</sup> Art. VII, s. 4(d)(2), Fla. Const. and s. 193.155, F.S.

<sup>14</sup> Art. VII, s. 4(d)(1), Fla. Const. and s. 193.155, F.S.

<sup>15</sup> See Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, <http://floridarevenue.com/property/Documents/pt112.pdf> (last visited Oct. 24, 2019).

<sup>16</sup> A change of ownership is any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person. See s. 193.155(3), F.S.

<sup>17</sup> Art. VII, s. 4(d)(3), Fla. Const.

<sup>18</sup> Art. VII, s. 4(d)(8), Fla. Const.; s. 193.155(8), F.S. The two-year timeframe is calculated from the time the old homestead exemption is abandoned and not the sale of the old homestead. See Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, <http://floridarevenue.com/property/Documents/pt112.pdf> (last visited Oct. 24, 2019).

<sup>19</sup> S. 193.155(8)(m), F.S.

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) 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 (division) within the Department of State has not estimated the publication costs for advertising the proposed amendment. However, based on 2018 advertising costs of \$135.97 per word, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately \$146,167.75 This would likely be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, an increased number of homeowners would be able to transfer their Save Our Homes benefit to a new homestead.

D. FISCAL COMMENTS:

The Revenue Estimating Conference determined the joint resolution had a zero/negative indeterminate impact because of the need for voter approval. If the constitutional amendment does not pass, the impact is zero. However, if approved, the Revenue Estimating Conference estimated that the joint resolution would reduce local property taxes by \$1.8 million, beginning in FY 2021-2022, eventually growing to an annual reduction of \$10.2 million.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not a joint resolution to amend the Constitution.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.<sup>20</sup> The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.<sup>21</sup>

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<sup>20</sup> Art. XI, s. 1, Fla. Const.

<sup>21</sup> Art. XI, s. 5, Fla. Const.

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 5, 2021. However, the joint resolution provides an effective date of January 1, 2021.

**B. RULE-MAKING AUTHORITY:**

The HJR neither authorizes nor requires administrative rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**