

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SJR 2-D

INTRODUCER: Finance and Tax Committee and Senator Haridopolos

SUBJECT: Ad Valorem Taxation

DATE: October 16, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

SJR 2-D provides property tax relief to Florida taxpayers. Specifically, SJR 2-D:

- Doubles the homestead exemption for all tax levies except school district tax levies;
- Provides an exemption for first-time homebuyers for all tax levies except school district tax levies;
- Exempts homestead property owned by low-income seniors from all property taxes on the first \$100,000 of assessed value;
- Provides portability of the Save Our Homes differential for all tax levies except school district tax levies;
- Provides a \$25,000 exemption for tangible personal property;
- Allows affordable housing subject to rent restrictions imposed by a governmental agency to be assessed as provided by general law;

- Allows working waterfronts to be assessed as provided by general law;
- Requires the Legislature to limit the authority of local governments, with the exception of school districts, to increase property taxes; and
- Requires that property appraisers be elected, even in charter counties.

SJR 2-D takes effect if approved by the voters, and will operate retroactively to January 1, 2008.

SJR 2-D substantially amends Sections 3, 4, 6, and 9 of Article VII, and Section 1 or Article VIII of the Florida Constitution, and creates section 27 and 28 of Article XII in the Florida Constitution.

## II. Present Situation:

### Property Taxation in Florida

Article VII of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property,<sup>1</sup> and directs the Legislature to establish requirements that local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district<sup>2</sup> and that property must be assessed at just value unless the Constitution provides for a different assessment standard.<sup>3</sup>

### Just Value Assessment of Property

The Florida Constitution<sup>4</sup> and Statutes<sup>5</sup> require property to be assessed at just value, unless the Constitution provides otherwise, as in the cases of homestead and agricultural property. The Florida Supreme Court has found just value to be synonymous with fair market value.<sup>6</sup> The eight criteria provided by s. 193.011, F.S., provide additional standards that property appraisers must take into consideration in arriving at just value. Attempts to provide for other standards of assessment by statute have been struck down by the courts in several cases.<sup>7</sup> The Constitution<sup>8</sup> also requires each county's tax roll to be found in compliance with the constitutional valuation standards by a state agency before the \$25,000 homestead exemption is allowed for non-school levies in that county. Further, the Constitution<sup>9</sup> expressly provides that the level of assessment for each county's tax roll, as determined by a state agency, can be a factor used in the distribution of state funds to local governments.

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<sup>1</sup> Sections 1(a) and 9(a), Art. VII, Fla. Const.

<sup>2</sup> Section 2, Art. VII, Fla. Const.

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

<sup>4</sup> Section 4, Art. VII, Fla. Const.

<sup>5</sup> Section 193.011, F.S.

<sup>6</sup> *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965)

<sup>7</sup> *Valencia Center, Inc. v. Bystrom* 543 So.2d 214 (Fla.,1989), *Interlachen Lakes Estates, Inc. v. Snyder* 304 So.2d 433 (Fla. 1973)

<sup>8</sup> Section 6(d), Art. VII, Fla. Const.

<sup>9</sup> Section 8, Art. VII, Fla. Const.

In correspondence with the Palm Beach County Board of County Commissioners in October 2006, the Florida Department of Revenue concurred with a statement made by the Palm Beach County property appraiser that he must base his assessment upon the highest and best use of property if it reflects the true market value of the property. The highest and best use in real estate appraisal is the use that will render the maximum fair market value of a particular property. That use must be legally allowable, physically possible, financially feasible, and result in the maximum value for the property. The test of highest and best use is given to a property both "as if vacant" and "as improved."

### **Tangible Personal Property**

Tangible personal property is singled out for special tax treatment by the following constitutional provisions:

*SECTION 1. Taxation; appropriations; state expenses; state revenue limitation.--*

*(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.*

*SECTION 3. Taxes; exemptions.--*

*(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.*

*(d) By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.*

*SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:*

*(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.*

Tangible personal property not excluded by the above provisions is subject to ad valorem taxation.

Section 193.052, F.S., requires that tax returns be filed for tangible personal property in the county where the property is located. The Department of Revenue is directed to promulgate rules to ensure that all railroad and utility property is properly returned in the appropriate county. However, the evaluating or assessing of utility property in each county is the duty of the property appraiser. Department of Revenue form DR-405 requires that a separate return must be filed by a taxpayer for each location in the county, except for owners of vending machines, propane tanks and similar free-standing property at many locations, who may submit a single return.

Section 193.075 (2), F.S., provides that a mobile home that is not assessed as real property is required to have a current (motor vehicle) license plate, and if it does not it is assessed as tangible personal property.

In 2007, 1,235,394 tangible personal property tax returns were filed, with a total taxable value of \$105.9 billion. The 1,005,660 returns with taxable amounts less than \$25,000 accounted for only \$4.6 billion of the total taxable value.

### **Save Our Homes**

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution that is popularly known as the “Save Our Homes” amendment. Annual increases in the assessment of homestead property were limited to the Consumer Price Index or 3 percent, whichever is lower, and the Save Our Homes limitation was first applied to the January 1, 1995 assessments.

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Thereafter the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at just value as of January 1 of the first year the property owner establishes homestead. Thereafter the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after its initial assessment this property is also subject to the Save Our Homes assessment limitation. If homestead status is terminated the property is assessed at just value.

### **Purpose of the Save Our Homes Amendment**

In *Smith v. Welton*,<sup>10</sup> the First District Court of Appeal said:

The purpose of the amendment is to encourage the preservation of homestead property in face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption, exemption from forced sale, and the inheritance and alienation of homestead.

### **Impact of Save Our Homes**

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<sup>10</sup> 710 So. 2d 135, 137 (Fla. App. 1998)

In the twelve years since Save Our Homes first limited the assessment of homestead property, its impact on the assessed value of this property has far exceeded original expectations. In 1997, the third year of assessment limitations, Save Our Homes reduced the assessed value of homestead property by 3 percent. In 2007, Save Our Homes reduced homestead assessed value by \$432 billion, which is more than 37 percent of the just value of homestead property in the state.

## Affordable Housing

The Florida Constitution provides no exception to the just value standard for assessment of property in affordable housing programs. General law provides that when assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits may be considered income to the property, and the actual rental income from rent-restricted units may be recognized by the property appraiser.<sup>11</sup> A property tax exemption exists for property used to provide affordable housing for eligible individuals if the property is owned entirely by a charitable nonprofit entity meeting certain federal criteria.<sup>12</sup> HB 1375, enacted by the 2007 Legislature, authorizes a county or municipality to adopt an ordinance to allow for the deferral of property taxes and non-ad valorem assessments if the owners of the property are operating, rehabilitating, or renovating affordable rental housing property. The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed.

The cost of housing has risen much faster in recent years than household income. From 2003 through 2005 the affordability of housing fell throughout the state.<sup>13</sup> In 2003, the median household had sufficient income to purchase a single-family home selling at the median price in 52 counties; by 2005 this was true in only 18 counties. In 2005, 5 counties – Miami-Dade, Collier, Franklin, Walton, and Monroe – had a median household income less than half of the income needed to buy a median-priced single-family home. Statewide, the average median sales price of a home was \$235,000 and the average home-buying power was \$157,650 – a gap of more than \$77,000. Florida has more than 1 million households that qualify as extremely-low-income households.<sup>14</sup>

## Working Waterfronts

“Recreational and commercial working waterfront” means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), F.S., or that provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to, or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities open to the public that offer public access by vessels to the waters of the state or are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Seaports are excluded from the definition.<sup>15</sup>

Counties and cities may allow tax deferrals for recreational and commercial working waterfronts by adopting ordinances or resolutions which specify:

- the percentage of taxes to be deferred,

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<sup>11</sup> S. 193.017, F.S.

<sup>12</sup> S. 196.1978, F.S.

<sup>13</sup> The State of Florida’s Housing 2006, Shimberg Center for Affordable Housing, 2007.

<sup>14</sup> *Id.*

<sup>15</sup> S. 342.07, F.S.

- the type of working waterfront property eligible for the tax deferral, and
- the location of property.

Tax deferrals and other liens may not exceed 85 percent of assessed value and the primary mortgage may not exceed 70 percent of assessed value. The deferred tax and interest (variable up to 9.5 percent) are due when:

- the property is sold,
- the required property insurance is not maintained, or
- the property ceases to be used as a working waterfront.

For coastal counties, the future land use element of comprehensive planning must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07, F.S.<sup>16</sup>

Proponents of this amendment argue that it is good public policy because public access to navigable water is diminishing and commercial working waterfronts face increasing expenses, including taxes and insurance. Establishing new working waterfronts with public access and maintaining existing ones may not be financially feasible unless taxes on property used for these purposes are reduced.

### **Homestead Exemption – Section 6, Art. VII, Florida Constitution**

Subsection (a), Art. VII of the Florida Constitution provides that every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another person legally or naturally dependent on the owner, shall be exempt from taxation up to the assessed value of five thousand dollars. Subsection (b) provides that only one exemption shall be allowed to any individual or family unit. Subsections (c) and (d) provide that under certain conditions the homestead exemption is \$25,000, which is, in fact, the effective homestead exemption. Subsection (f) provides that, by local option, an additional homestead exemption of up to \$50,000 is available to low-income seniors, and subsection (g) provides an ad valorem tax discount for homestead property owned by disabled veterans who were Florida residents at the time they entered military service.

In 2007 there were 4,464,236 homesteads in Florida, and the homestead exemption reduced the 2007 tax roll by \$111.0 billion, or 15.2%.

### **Low-Income Seniors**

Any county or city may allow an additional homestead exemption of up to \$50,000 for any person 65 years of age and older whose household income<sup>17</sup> does not exceed \$24,214 (in 2007). The income limit is increased each year by the percentage change in the Consumer Price Index. The exemption only applies to taxes levied by the county or city enacting the exemption.<sup>18</sup> In 2006, 53 counties and 178 municipalities had implemented the exemption. Prior to the

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<sup>16</sup> S. 163.3177, F.S.

<sup>17</sup> Adjusted gross income as defined in s. 62 of the United States Internal Revenue Code.

<sup>18</sup> Art. VII, sec. 6(f), Fla. Const., and s. 196.075, F.S.

constitutional amendment effective January 1, 2007, the exemption limit was \$25,000. There are 211,000 homesteads benefiting from the current exemption.

Homeowners 65 years of age and older, with household income of less than \$24,214 in the prior year, may defer all ad valorem taxes and non-ad valorem assessments. All senior homesteaders may defer the portion of their tax levy that exceeds 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 may 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.

Household income is defined for purposes of this exemption as adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, for all members of the household. This measure of household income does not include non-taxable social security benefits, non-taxable pensions and annuities, and non-taxable IRA distributions. In general, social security benefits are non-taxable if the sum of ½ of social security benefits plus other all other income is less than \$25,000 for an individual and \$32,000 for a married couple filing jointly.

There were 1.2 million homesteads in Florida owned by persons 65 years of age or older in 2006. Based on U.S. Census data, 42 percent of the total population 65 years of age and older has household income below \$25,000.

### **Limitations on Ad Valorem Taxes**

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>19</sup> Local governments may levy ad valorem taxes subject to the following limitations:

- 10 mills for county purposes,
- 10 mills for municipal purposes,
- 10 mills for school purposes,
- 1 mill for water management purposes, except in Northwest Florida where the limit is .05 mill,
- Millage fixed by law for a county furnishing municipal services, and
- Millage authorized by law and approved by voters for special districts.<sup>20</sup>

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.<sup>21</sup>

### **Election of Local Officials**

Section 1(d) of Art. VIII of the Florida Constitution provides that every county shall have a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. These county officers are elected for terms of four years, unless provided otherwise by a

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<sup>19</sup> Art. VII, sec. 1(a), Fla. Const.

<sup>20</sup> Art. VII, sec. 9, Fla. Const. A mill is equal to \$1 per \$1,000 of value, or .001. A tax rate of 10 mills is equal to 1%.

<sup>21</sup> Art. VII, sec 9(b), Fla. Const.

county charter or special law approved by the voters, in which case they may be chosen as specified by the charter or special law. Presently, the Miami-Dade County has the only non-elected property appraiser in the state.

### **III. Effect of Proposed Changes:**

#### **Ad Valorem Taxes on Tangible Personal Property**

SJR 2-D grants a \$25,000 exemption from ad valorem taxes to tangible personal property (TPP) of \$25,000.

#### **Portability of Save Our Homes Differential**

SJR 2-D provides that homestead property owners will be able to transfer their Save Our Homes differential to a new homestead within two years of giving up their previous homestead. If the new homestead is more valuable than the old one the entire differential can be transferred; if the new homestead is less valuable the transferable differential will be proportional to the value of the new homestead. (For those who establish new homesteads as of January 1, 2008, only the differential as of January 1, 2007 may be transferred.) The transferred differential does not apply to school taxes.

#### **Affordable Housing**

SJR 2-D allows real property used to provide affordable housing subject to rent restrictions imposed by a government agency to be classified and assessed based on use. The restricted assessments will not apply to school taxes.

#### **Working Waterfronts**

SJR 2-D allows land that is used exclusively for commercial fishing purposes or that is open to the public and used predominantly for commercial water-dependent activities or for public access to waters that are navigable to be assessed as provided by general law. "Water-dependent activity" is limited to activities that can be conducted only on, in, over, or adjacent to waters that are navigable and that require direct access to water and involve the use of water as an integral part of the activity. The restricted assessments will not apply to school taxes.

#### **Double Homestead Exemption**

SJR 2-D provides an additional \$25,000 homestead exemption for property valued between \$50,000 and \$75,000. This exemption does not apply to school taxes.

#### **First-time Homebuyers**

First-time homebuyers in Florida who qualify for homestead exemption will be eligible for an additional exemption equal to 25 percent of the value of their new home, with a maximum exemption equal to 25 percent of the county average home value. This exemption will decrease as the home accumulates a Save Our Homes differential and expires when the differential is

greater than or equal to the exemption. This exemption is available to 2007 first-time homebuyers who qualify for a homestead exemption January 1, 2008. This exemption does not apply to school taxes.

### **Low-Income Senior Exemption**

SJR 2-D provides that any homesteader 65 or older whose household income is less than \$23,604 (adjusted annually for inflation) will be exempt from taxes, including school taxes, on the first \$100,000 of assessed value of homestead property. (The proposed income definition is used for an existing total exemption available to certain totally and permanently disabled individuals; this makes the income threshold more restrictive than what is used for the current local option low-income senior exemption.) This provision applies to all taxes.

### **Local Government Property Tax Limitation**

SJR 2-D requires the Legislature to limit increases in local property taxes. This provision does not apply to school taxes.

### **Elected Property Appraiser**

SJR 2-D requires all county property appraisers to be elected, and provides that even if a county charter abolishes the office of property, the office to which the constitutional duties of the property appraiser are transferred under the charter must be elected.

SJR 2-D will take effect upon approval by the electorate and will operate retroactively to January 1, 2008.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The mandates provision of the Florida Constitution does not apply to Joint Resolutions.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

In 2006 the Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The report focused primarily on the federal constitutional issues raised by the proposed alternatives to the Save Our Homes amendment, which

limits property tax assessment increases on homestead property. The study did not examine specifically the portability proposal included in this Senate Joint Resolution.

The key findings were that portability may provide opportunities for legal challenge based on the Commerce Clause, the “Interstate” Privileges and Immunities Clause, and the Right to Travel. If portability is adopted and later held to be unconstitutional, the discrimination or burden it created would have to be eliminated on a prospective basis and remedied through meaningful backward-looking relief on a retrospective basis which could entail either a refund or any other remedy that cures the discrimination, e.g., taxing the previously favored class on a retroactive basis.

The first-time Florida homeowner exemption and additional \$25,000 homestead exemption created by SJR 2-D may mitigate some or all of the issues identified in the legal analysis of portability.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

If the changes to the State Constitution in SJR 2-D are approved by the voters, local governments’ ad valorem tax revenues will be reduced as follows:

Revenue Impacts by Issue (\$ Millions)					
	2008-09	2009-10	2010-11	2011-12	4 year total
Double Homestead Exemption	(876)	(888)	(900)	(907)	(3,571)
Portability	(184)	(445)	(666)	(899)	(2,195)
First-time Florida Homebuyer	(65)	(149)	(221)	(264)	(699)
Low income Senior Exemption	(327)	(333)	(339)	(346)	(1205)
Affordable Housing	(45)	(46)	(47)	(48)	(186)
Working Waterfronts	--	(44)	(46)	(49)	(138)
Tangible Personal Property	(177)	(179)	(181)	(182)	(719)
Total	(1,675)	(2,041)	(2,353)	(2,647)	(8,716)

**B. Private Sector Impact:**

Taxpayers will experience lower taxes if this joint resolution is approved, and the tax burden will be shifted among taxpayers.

**C. Government Sector Impact:**

Local governments, including school districts, will receive less property tax revenue if this amendment is approved unless they override the revenue limitations imposed in s. 200.186, F.S. by a unanimous vote or referendum of the voters.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax on October 16, 2007:**

The committee substitute amends the low-income senior homestead exemption by limiting it to assessed value up to \$100,000. It also provides that a person who performs the constitutional duties of the county property appraiser must be elected even if those duties are performed in a county whose charter has abolished the position of property appraiser.

- B. **Amendments:**

None.