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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – This bill would provide taxpayers a practical way to challenge governmental assessments of valuation.

B. EFFECT OF PROPOSED CHANGES:

Article I, section 1 of the Florida Constitution declares that all political power is inherent in the people. Section 2 affirms the rights of natural persons to be rewarded for industry, and to acquire, possess and protect property. Section 9 declares that no person shall be deprived of life, liberty or property without due process of law. Section 21 provides that the courts shall be open to every person for redress of injury.

Collectively, these sections provide for the right of persons to own property of every kind (including business endeavors, real property, and tangible personal property), to be taxed on that property at a value and rate which is uniform, and to have reasonable access to the court system should taxes be improperly assessed against their property. Many members of the legislature have been informed by their constituents that these rights are in jeopardy. There has also been testimony before the House regarding these same concerns.

One specific concern has been the assessment of ad valorem taxation pursuant to Chapter 194, F.S., which is entitled Administrative and Judicial Review of Property Taxes. Currently in any administrative or judicial action in which a taxpayer seeks to challenge an ad valorem tax assessment valuation, the property appraiser's assessment is entitled to a presumption of correctness pursuant to s. 194.301, F.S. If the presumption of correctness is retained, taxpayers have the burden of proving by clear and convincing evidence that the appraiser's valuation is in excess of just value. As a result of the presumption of correctness and the burden of proof placed upon taxpayers, most taxpayers do not prevail in a challenge of ad valorem tax assessments by property appraisers. The practical effect of these two rules of evidence may constitute a denial of taxpayers' rights embedded in the Florida Constitution.

HJR 7005 amends the Taxpayers' Bill of Rights contained in Article I, section 25 of the Florida Constitution to add the entitlement to a full and fair opportunity to challenge the government's assessment of the valuation of property for purposes of all taxation. It also: specifically removes the property appraiser's presumption of correctness; places the burden of proof by a preponderance of the evidence upon the property appraiser in an assessment challenge; finds evidence that an assessment is based upon an appraisal practice different from those applied to comparable property within the state to be relevant to the determination of just valuation; and provides for reasonable attorneys fees and costs incurred in the assessment challenge under appropriate circumstances to be specified by general law.

The bill requires both the joint resolution and the implementing legislation concerning assessment challenges to have an effective date no later than January 1, 2009.

Pursuant to Article XI, section 1 of the Florida Constitution, joint resolutions must be approved by a three-fifths vote of each house of the Legislature. Article XI, section 5(e) of the Florida Constitution requires constitutional amendments to be approved by vote of at least sixty percent of the electors voting on the measure.

This joint resolution appears to have a minimal negative fiscal impact on state government related to the cost of publishing the proposed amendment as required by the state constitution. If the joint resolution is approved by the voters, local governments may receive less ad valorem revenue as a

result of more taxpayers prevailing in challenges of assessments made by property appraisers. Because property appraisers will need to prove the correctness of their assessments in valuation challenges, they may incur additional expenditures. This HJR has not yet been considered by a Revenue Estimating Impact Conference.

C. SECTION DIRECTORY:

A section directory is not applicable to a Joint Resolution. HJR 7005 would: amend Article I, section 25, Florida Constitution, to expand the Taxpayers' Bill of Rights; contain a Ballot Summary; and provide for an effective date no later than January 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This joint resolution appears to have a minimal negative fiscal impact on state government related to the cost of publishing the proposed amendment as required by the state constitution.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If approved by the voters, local governments may receive less ad valorem revenue as a result of more taxpayers prevailing in challenges to assessments made by the property appraiser. The HJR has not been to a Revenue Estimating Impact Conference.

2. Expenditures:

If approved by the voters, property appraisers will need to prove the correctness of their assessments in valuation challenges. This may result in additional expenditures by the property appraisers to prove valuation. The HJR has not been to a Revenue Estimating Impact Conference.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers are likely to prevail more often in challenges to valuation assessments and thereby reduce the assessed value of their property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.