

**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.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SJR 718

INTRODUCER: Senator Fasano

SUBJECT: Homestead Property Assessed Value

DATE: March 23, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.			FT	
3.			EA	
4.			WPSC	
5.			RC	
6.				

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**I. Summary:**

This joint resolution proposes an amendment to section 4, Article VII, of the State Constitution, to prohibit increases in the assessed value of homestead property in any year where the market value of the property decreases.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature.

**II. Present Situation:**

**Property Valuation**

***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 Florida 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,

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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 section 4, Art. VII, of the State Constitution, were implemented in Part II of ch. 193, F.S.

and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.<sup>3</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 totally exempt from taxation.<sup>4</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.<sup>5</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.<sup>6</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>7</sup> Certain working waterfront property is assessed based upon the property's current use.<sup>8</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 by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>9</sup>

### **“Save Our Homes” Assessment Limitation**

The “Save Our Homes” provision in section 4(d), 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 Consumer Price Index (CPI).<sup>10</sup> The Save Our Homes limitation was amended into the Florida Constitution in 1992, to provide that:

- All persons entitled to a homestead exemption under section 6, Art. VII of the State Constitution, have their homestead assessed at just value by January 1 of the year following the effective date of the amendment.
- Thereafter, annual changes in homestead assessments on January 1 of each year could not exceed the lower of three percent of last year's assessment or the Consumer Price Index (CPI) for All Urban Consumers, U.S. City Average, all items 1967= 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
- No assessment may exceed just value.

In 2008, Florida voters approved an additional amendment to section 4(d), Art. VII, State Constitution, to provide for the portability of the accrued “Save Our Homes” benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to \$500,000 of the “Save Our Homes” accrued benefit to the new homestead.

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<sup>3</sup> Art. VII, section 4(a) of the Florida Constitution.

<sup>4</sup> Art. VII, section 4(c) of the Florida Constitution.

<sup>5</sup> Art. VII, section 4(e) of the Florida Constitution.

<sup>6</sup> Art. VII, section 4(f) of the Florida Constitution.

<sup>7</sup> Art. VII, section 4(i) of the Florida Constitution.

<sup>8</sup> Art. VII, section 4(j) of the Florida Constitution.

<sup>9</sup> Art. VII, sections 3 and 6 of the Florida Constitution. *See also* ch. 196, F.S.

<sup>10</sup> Art. VII, section 4(d) of the Florida Constitution.

**Section 193.155, Florida Statutes**

In 1994, the Legislature enacted ch. 94-353, Laws of Florida, to implement the “Save Our Homes” amendment into s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994.<sup>11</sup> Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the “Save Our Homes” provision in section 4(d), Art. VII, State Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lower of:

- Three percent of the assessed value from the prior year; or
- The percentage change in the CPI for All Urban Consumers, U.S. City Average, all items 1967= 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.<sup>12</sup>

Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds the just value, the assessed value must be lowered to just value of the property.

**Rule 12D-8.0062, Florida Administrative Code (F.A.C.): “The Recapture Rule”**

In October 1995, the Governor and the Cabinet of the Department of Revenue adopted rule 12D-8.0062, F.A.C., entitled “Assessments; Homestead; and Limitations”.<sup>13</sup> The administrative intent of this rule is to govern “the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, section s. 4(c), Florida Constitution and s. 193.155, F.S.”<sup>14</sup>

Subsection (5) of Rule 12D-8.0062, F.A.C., is popularly known as the “recapture rule”. This subsection requires property appraisers to increase the prior year’s assessed value of a homestead property by the lower of three percent or the CPI on all property where the value is lower than the just value. The specific language in Rule 12D-8.0062(5), F.A.C., which is referred to as the “recapture provision” states:

(5) Where the current year just value of an individual property exceeds the prior year assessed value, the property appraiser is *required* to increase the prior year’s assessed value ....<sup>15</sup>

Under current law, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead owners entitled to the “Save Our Homes”

<sup>11</sup> See *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994) (“the clear language of the amendment establishes January 1, 1994, as the first “just value” assessment date, and as a result, requires the operative date of the amendment’s limitations, which establish the “tax value” of homestead property, to be January 1, 1995”).

<sup>12</sup> Section 193.155(1), F.S.

<sup>13</sup> While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

<sup>14</sup> Rule 12D-8.0062(1), F.A.C.

<sup>15</sup> Rule 12D-8.0062(5), F.A.C. (emphasis added)

cap may see an increase in the assessed value of their home in years where the just/market value of their property decreased.<sup>16</sup>

Subsection (6) provides that if the change in the CPI is negative, then the assessed value shall be equal to the prior year's assessed value decreased by that percentage.

### **Markham v. Department of Revenue<sup>17</sup>**

On March 17, 1995, William Markham, a Broward County Property Appraiser, filed a petition challenging the validity of the Department of Revenue's proposed "recapture rule" within Rule 12D-8.0062, F.A.C. Markham alleged that the proposed rule was "an invalid exercise of delegated legislative authority and is arbitrary and capricious".<sup>18</sup> Markham also claimed that subsection (5) of the rule was at variance with the constitution- specifically that it conflicted with the "intent" of the ballot initiative and that a third limitation relating to market value or movement<sup>19</sup> should be incorporated into the language of the rule to make it compatible with the language in section 4(c), Art. VII, State Constitution.

A final order was issued by The Division of Administrative Hearings on June 21, 1995, which upheld the validity of Rule 12D-8.0062, F.A.C., and the Department of Revenue's exercise of delegated legislative authority. The hearing officer determined that subsection (5) and (6) of the administrative rule were consistent with Section 4(c), Art. VII, State Constitution. The hearing officer also held that the challenged portions of the rule were consistent with the agency's mandate to adopt rules under s. 195.027(1), F.S., since the rule had a factual and logical underpinning, was plain and unambiguous, and did not conflict with the implemented law.<sup>20</sup>

In response to the petitioner's assertion of a third limitation on market movement, the hearing officer concluded that the rule was not constitutionally infirm since there was no mention of "market movement" or "market value" in the ballot summary of the amendment nor did the petitioner present any evidence of legislative history concerning the third limitation.<sup>21</sup>

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

This joint resolution proposes an amendment to section 4, Article VII, of the State Constitution, to prohibit increases in the assessed value of a homestead property in any year where the market value of the property decreases.

The joint resolution also deletes obsolete language in section 4(d)(8), Article VII, of the State Constitution.

If approved by Florida voters, this joint resolution will take effect on January 1, 2011.

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<sup>16</sup> *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995) (stating that "subsection (5) requires an increase to the prior year's assessed value in a year where the CPI is greater than zero").

<sup>17</sup> *Markham v. Dep't of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ 21 (stating that "[t]his limitation, grounded on "market movement," would mean that in a year in which market value did not increase, the assessed value of a homestead property would not increase").

<sup>20</sup> *Id.* at ¶ 20.

<sup>21</sup> *Id.* at ¶ 22.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Section 1, Art. XI, State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(e), Art. XI, State Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Tax revenues previously collected by local governments will be retained by taxpayers. However, taxpayers may experience a reduction in government and education services due any reductions in ad valorem tax revenues.

**C. Government Sector Impact:**

Section 5(d), Art. XI, 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 tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$94.68 for this fiscal

year. The division estimates the full publication costs for this joint resolution to be \$164,459.16.<sup>22</sup>

If this joint resolution is approved by Florida voters, Rule 12D-8.0062, F.A.C., will need to be amended.

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

If this joint resolution is approved by Florida voters and enacted into law, similar provisions will likely be proposed for the assessment limitations provided in subsections 4(g) and (h), Art. VII, of the State Constitution.<sup>23</sup>

Section 4(g), Art. VII, State Constitution, provides that for all levies other than school levies, the assessed value of residential real property containing nine or fewer units may not be increased annually by more than 10 percent of the assessment in the prior year.

Section 4(h), Art. VII, State Constitution, provides that for all levies other than school levies, the assessed value of real property not subject to limitations in other provisions of the constitution may not be increased annually by more than 10 percent of the assessment in the prior year.

**VIII. Additional Information:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>22</sup> Department of State, *Senate Joint Resolution 718 Fiscal Analysis* (Jan. 6, 2010) (on file with the Senate Committee on Community Affairs).

<sup>23</sup> Sections 4(g) and (h), Art. VII, State Constitution, were created in January 2008, when Florida electors approved Amendment 1 to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses.