

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 16-01 Ad Valorem Taxation

SPONSOR(S): Finance & Tax Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	12 Y, 5 N	Dugan	Langston

SUMMARY ANALYSIS

The Florida Constitution limits the annual growth in the assessed value of homestead properties to the lesser of three percent or the inflation rate. For certain non-homestead properties, the annual growth in the assessed value is limited to 10 percent. In certain circumstances, the assessed value of property might grow at a faster rate than the market value.

The joint resolution proposes a constitutional amendment to allow the Legislature to add an additional limit to the rate of growth for assessed value. If the joint resolution becomes law and is implemented by the Legislature, the growth rate of homestead property would be limited to the lesser of three percent, the inflation rate, or the percent change in the homestead property's just value if the change is greater than or equal to zero. The growth rate of certain non-homestead property would be limited to the lesser of 10 percent or the percent change in the non-homestead property's just value if the change is greater than or equal to zero.

The joint resolution also proposes to allow the Legislature by general law to prohibit increases in the assessed value of homestead property and certain non-homestead property in any year where the market value of the property decreases. If created by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of a property decreases.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

The Revenue Estimating Conference estimated the bill to have a zero impact due to the need for approval by the electorate and further implementation by the Legislature (see fiscal analysis section).

Based on 2014 advertising costs, staff estimates the full publication costs for advertising the proposed constitutional amendment to be approximately \$266,000. This would be paid from non-recurring General Revenue funds.

For the proposed constitutional amendment to be placed on the ballot at the general election in November 2016, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Just Value

Article VII, section 4 of the Florida 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 property in an arm’s length transaction.¹

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.² 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.³ Land used for conservation purposes must be assessed solely on the basis of character or use.⁴ 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.⁵ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁶ 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.⁷ 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.⁸ Certain working waterfront property is assessed based upon the property’s current use.⁹

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 article VII, section 4 of the Florida Constitution limits the amount a homestead property’s assessed value can increase annually to the lesser of three percent or the inflation rate as measured by the Consumer Price Index (CPI).¹⁰ This allows a differential between just value and assessed value to develop over time for a property. Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to that homestead.¹¹

¹ s. 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).

² The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

³ Fla. Const. art. VII, s. 4(a).

⁴ Fla. Const. art. VII, s. 4(b).

⁵ Fla. Const. art. VII, s. 4(c).

⁶ Fla. Const. art. VII, s. 4(e).

⁷ Fla. Const. art. VII, s. 4(f).

⁸ Fla. Const. art. VII, s. 4(i).

⁹ Fla. Const. art. VII, s. 4(j).

¹⁰ Fla. Const. art. VII, s. 4(d).

¹¹ Fla. Const. art. VII, s. 4(d).

Section 193.155, Florida Statutes

In 1994, the Legislature implemented the “Save Our Homes” amendment in s. 193.155, F.S.¹² The legislation required all homestead property to be assessed at just value by January 1, 1994.¹³ 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 constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lesser of three percent or the growth in the CPI. Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds its just value, the assessed value must be lowered to the just value of the property.

Rule 12D-8.0062, Florida Administrative Code: “The Recapture Rule”

In October 1995, the Governor and the Cabinet, acting as the head of the Department of Revenue, adopted Rule 12D-8.0062, F.A.C., entitled “Assessments; Homestead; and Limitations.”¹⁴ The rule “govern[s] the determination of the assessed value of property subject to the homestead assessment limitation under article VII, section 4(c) of the Florida Constitution and section 193.155, F.S.”¹⁵

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

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 value¹⁶

Currently, this requirement applies even if the just value of the homestead property has decreased from the prior year. Therefore, homestead property owners entitled to the “Save Our Homes” cap whose property is assessed at less than just value may see an increase in the assessed value of their home in years where the just/market value of their property has decreased.

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

Markham v. Department of Revenue¹⁷

On March 17, 1995, William Markham, the 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.”¹⁸ 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

¹² ch. 94-353, Laws of Fla.

¹³ *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.”

¹⁴ While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-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.

¹⁵ Rule 12D-8.0062(1), F.A.C.

¹⁶ Rule 12D-8.0062(5), F.A.C.

¹⁷ *Markham v. Department of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995).

¹⁸ *Id.*

that a third limitation relating to market value or movement¹⁹ should be incorporated into the language of the rule to make it compatible with the language in article VII, section 4(c) of the Florida 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 subsections (5) and (6) of the administrative rule were consistent with article VII, section 4(c) of the Florida 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.²⁰

Additional Assessment Limitations

Article VII, sections 4(g) and (h) of the Florida 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, respectively. 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. Article XII, section 27 of the Florida 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

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 applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to a homestead property's assessed value between \$50,000 and \$75,000, excluding school district levies.

Other Exemptions

Article VII, section 3 of the Florida 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.²¹ Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.²² 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.²³ A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.²⁴ Tangible personal property is exempt up to \$25,000 of its assessed value.²⁵ There is an exemption for real property dedicated in perpetuity for

¹⁹ *Markham v. Department of Revenue, Case No. 95-1339RP (Fla. DOAH 1995)* (“[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.”).

²⁰ *Id.* at ¶ 20.

²¹ Fla. Const. art. VII, s. 3(a).

²² Fla. Const. art. VII, s. 3(b).

²³ Fla. Const. art. VII, s. 3(c).

²⁴ Fla. Const. art. VII, s. 3(d).

²⁵ Fla. Const. art. VII, s. 3(e).

conservation purposes.²⁶ 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.²⁷

Effect of Proposed Changes

The joint resolution proposes a constitutional amendment to allow the Legislature by general law to add an additional limit to the rate of growth for assessed value. If the joint resolution becomes law and is implemented by the Legislature, the growth rate of homestead property would be limited to the lesser of three percent, the inflation rate, or the percent change in the homestead property's just value if the change is greater than or equal to zero. The growth rate of non-homestead property currently eligible for the 10 percent annual assessment growth limit would be limited to the lesser of 10 percent or the percent change in the property's just value if the change is greater than or equal to zero.

The joint resolution also proposes to allow the Legislature by general law to prohibit increases in the assessed value of homestead property and non-homestead property currently eligible for the 10 percent annual assessment growth limit in any year where the market value of the property decreases. If created by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of a property decreases. The assessed value of such properties could still increase for unrelated reasons, such as an increase in just value due to improvements made to the homestead property.²⁸

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, section 5(d) of the Florida 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 within the Department of State has not estimated the publication costs for advertising the joint resolution.

Based on 2014 advertising costs, staff estimates the full publication costs for advertising the proposed constitutional amendment to be approximately \$266,000. This would be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²⁶ Fla. Const. art. VII, s. 3(f).

²⁷ Fla. Const. art. VII, s. 3(g).

²⁸ See, Art. VII, s. 4(d)(5) of the Florida Constitution.

On November 13, 2015, the Revenue Estimating Conference estimated the bill to have a zero impact due to the need for approval by the electorate and further implementation by the Legislature.

However, the conference estimated that, assuming current millage rates, if approved in the referendum and fully implemented by the Legislature, the annual recurring impact on property tax collections would be approximately -\$65.6 million for schools and -\$96.6 million for non-school purposes, reflecting a build-up of impacts over five years. For non-school purposes in fiscal years 2017-18 and 2018-19 there would be additional non-recurring impacts of -\$43.0 million and -\$169.2 million, respectively, reflecting the January 1, 2019 repeal of the 10 percent growth limit on certain non-homestead properties.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Upon voter approval and implementation by the Legislature, owners of homestead property and non-homestead residential rental and commercial real property will not experience increased property taxes in a year where the market value of the property decreases.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.²⁹ 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 the 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.³⁰

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁹ Fla. Const. art. XI, s. 1.

³⁰ Fla. Const. art. XI, s. 5.