



Finance and Tax Committee

Tuesday, December 6, 2011

11:00 a.m.

Morris Hall

MEETING PACKET

Dean Cannon
Speaker

Stephen Precourt
Chair



Finance and Tax Committee

AGENDA

December 6, 2011
11:00 a.m. – 12:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of the following bill(s):
HB 103 - Transfer of Tax Liability by Wood

Workshop on the following:
HJR 55 - Homestead Assessment Limitation/Senior Citizens by Nuñez,
Fresen
- III. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 55 Homestead Assessment Limitation/Senior Citizens

SPONSOR(S): Nuñez and others

TIED BILLS: IDEN./SIM. BILLS: SJR 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Aldridge <i>A</i>	Langston <i>SL</i>
2) Community & Military Affairs Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HJR 55 proposes an amendment to the state constitution that would allow the Legislature by general law to permit counties and municipalities to limit ad valorem tax assessments applicable to their respective levies to the previous year's assessed value for homestead property that is subject to the current local option low-income senior exemption. The limitation could apply if the market value of a homestead property is less than the market value of the property on the preceding January 1 or no more than 150 percent of the average homestead market value in the county.

The general law implementing the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality. The designated agency will provide this information to property appraisers. The implementing law must also require that counties and municipalities choosing to provide the assessment limitation do so by ordinance.

To the extent that county and city governments choose the option offered by this constitutional amendment, their property tax bases will be lower than would otherwise be the case. See Section II.B. of this analysis for additional information regarding the potential revenue impact on local governments.

The joint resolution would have a nonrecurring fiscal impact on the state for the cost of advertising the proposed amendment.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.¹ Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the state constitution as follows:²

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

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. Millage rates vary among local governments and are fixed by ordinance or resolution of the taxing authority's governing body.³

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.⁴

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.⁵ Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.⁶

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.⁷ However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.⁸

The Florida Constitution grants property tax relief in the form of certain valuation differentials,⁹ assessment limitations,¹⁰ and exemptions,¹¹ including the homestead exemptions.

¹ Article VII, s. 9, Fla. Const.

² A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of taxable value.

³ Section 200.001(7), F.S.

⁴ Section 197.383, F.S.

⁵ Section 195.002, F.S.

⁶ Chapter 195, F.S.

⁷ Article VII, s. 2, Fla. Const.

⁸ See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. Dist. Ct. App. 4th Dist. 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

⁹ Article VII, s. 4, Fla. Const., authorizes valuation differentials, which are based on character or use of property.

¹⁰ Article VII, s. 4(c), Fla. Const., authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed

Homestead Exemption

The Homestead Exemption provides an exemption from all ad valorem taxes on the first \$25,000 of assessed value for owners of homestead property, provided that the tax roll in their county has been approved.¹² An additional \$25,000 exemption is provided for assessed values between \$50,000 and \$75,000; however, this exemption does not apply to school taxes.¹³

Save Our Homes

The "Save Our Homes" provision in s. 4, 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 inflation rate as measured by the Consumer Price Index (CPI).¹⁴ Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued "Save Our Homes" benefit to that homestead.¹⁵

Section 193.155, Florida Statutes

In 1994, the Legislature implemented the "Save Our Homes" amendment in s. 193.155, F.S.¹⁶ The legislation required all homestead property to be assessed at just value by January 1, 1994.¹⁷ 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."¹⁸ The rule "govern[s] the determination of the assessed value of property subject to the homestead assessment limitation under Article VII, Section 4(c), Florida Constitution and Section 193.155, F.S."¹⁹

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

value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

¹¹ Article VII, s. 3, Fla. Const., provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

¹² Article VII, s. 6, Fla. Const.

¹³ *Id.* See also Am. C.S. for S.J.R. 2-D, 2007.

¹⁴ Article VII, s. 4(d), Fla. Const.

¹⁵ *Id.*

¹⁶ Chapter 94-353, L.O.F.

¹⁷ 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."

¹⁸ While s. 193.155, F.S., did not provide specific rulemaking authority, the Department of Revenue adopted Rule 12D-8.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.027, 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.

¹⁹ Rule 12D-8.0062(1), F.A.C.

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 value²⁰

Currently, 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" 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 Revenue*²¹

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."²² 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 movement²³ should be incorporated into the language of the rule to make it compatible with the language in s. 4(c), Art. VII of the 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 subsections (5) and (6) of the administrative rule were consistent with s. 4(c), Art. VII of the 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.²⁴

Low-Income Seniors

Counties and cities may allow an additional homestead exemption of up to \$50,000 for anyone 65 years or older whose household income does not exceed \$20,000, adjusted annually by the percentage change in the average cost-of-living index.²⁵ The exemption only applies to taxes levied by the county or city enacting the exemption.²⁶

Under the Homestead Property Tax Deferral Act, any homesteader 65 years or older who would qualify for the exemption would also qualify to defer all ad valorem taxes.²⁷ All senior homesteaders may defer the portion of their tax levy exceeding 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 does 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.

²⁰ Rule 12D-8.0062(5), F.A.C.

²¹ *Markham v. Department of Revenue*, Case No. 95-1339RP (Fla. DOAH 1995).

²² *Id.*

²³ *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."

²⁴ *Id.* at ¶ 20.

²⁵ Article VII, s. 6, Fla. Const. *See also* s. 196.075, F.S.

²⁶ Section 196.075(4), F.S.

²⁷ Section 197.243, F.S.

Proposed Changes

The joint resolution proposes an amendment to the state constitution that would allow the Legislature by general law to permit counties and municipalities to limit, for homestead property qualifying for the low-income senior exemption, ad valorem tax assessments for their respective levies to the previous year's assessed value.

To be eligible for the limitation on assessment, the following conditions must be met:

- The property qualifies for the low-income senior exemption, which requires that:
 - The county or municipality has granted the exemption by ordinance;
 - The person has title to the property and maintains his or her permanent residence thereon;
 - The owner is 65 or older; and
 - The owner's annual household income is less than \$26,203.²⁸
- The just value of the property is less than the just value of the property on the preceding January 1 or is no more than 150% of the average just value of homestead property within the county.

The general law implementing of the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality based upon the prior year final tax roll of each county. The designated agency will provide this information to property appraisers. The implementing law must also require that counties and municipalities choosing to provide the assessment limitation must do so by ordinance.

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:

The Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county.²⁹ The Division estimates the cost of advertising the proposed constitutional amendment would be \$211,855.44.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) adopted an indeterminate negative revenue impact of this resolution on local governments. However, the amendment, if passed, would only affect a county or municipality that chose to impose the cap on assessed value for its assessment.

²⁸ Pursuant to s. 196.075(3), F.S., the household income limitation is set at \$20,000 as of January 1, 2001, and adjusted annually by the percentage change in the average cost-of-living index issued by the United States Department of Labor. For 2011, that indexed household income amount is \$26,203. See: <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited December 1, 2011)

²⁹ Article XI, s. 5(d), Fla. Const.

³⁰ Department of State, *House Joint Resolution 55 (2012) Fiscal Analysis* (September 12, 2011).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The resolution could reduce property taxes on certain qualifying seniors. Such a reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.

D. FISCAL COMMENTS:

If the amendment is approved by the voters and the legislature passes implementing/authorizing legislation, and those counties and municipalities that currently grant the additional homestead exemption for low-income seniors pass the necessary ordinances to adopt the assessment limitation cap provided by this joint resolution, the REC estimates a negative revenue impact on local governments of at least \$2.3 million in FY 2014-15 and \$4.2 million in FY 2015-16.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to Joint Resolutions.

2. Other:

Legislative Proposed Amendments

Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths 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's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution to authorize counties and municipalities to limit the assessed value of the homesteads of certain low-income senior citizens.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

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:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property

29 held for sale as stock in trade and livestock may be valued for
 30 taxation at a specified percentage of its value, may be
 31 classified for tax purposes, or may be exempted from taxation.

32 (d) All persons entitled to a homestead exemption under
 33 Section 6 of this Article shall have their homestead assessed at
 34 just value as of January 1 of the year following the effective
 35 date of this amendment. This assessment shall change only as
 36 provided in this subsection.

37 (1) Except as provided in paragraph (2), assessments
 38 subject to this subsection shall be changed annually on January
 39 1~~st~~ of each year; but those changes in assessments shall not
 40 exceed the lower of the following:

41 a. Three percent ~~(3%)~~ of the assessment for the prior
 42 year.

43 b. The percent change in the Consumer Price Index for all
 44 urban consumers, U.S. City Average, all items 1967=100, or
 45 successor reports for the preceding calendar year as initially
 46 reported by the United States Department of Labor, Bureau of
 47 Labor Statistics.

48 (2) The legislature may, by general law, allow counties or
 49 municipalities, for the purpose of their respective tax levies
 50 and subject to the provisions of general law, to limit
 51 assessments on homestead property subject to the additional
 52 homestead tax exemption under Section 6(d) to the assessed value
 53 of the property in the prior year if the just value of the
 54 property is less than the just value of the property on the
 55 preceding January 1 or is equal to or less than one hundred
 56 fifty percent of the average just value of homestead property

57 | within the respective county or municipality. The general law
 58 | must allow counties and municipalities to provide this
 59 | limitation by ordinance adopted in the manner prescribed by
 60 | general law, specify the state agency designated to calculate
 61 | the average just value of homestead property within each county
 62 | and municipality, and provide that such agency annually supply
 63 | that information to each property appraiser. The calculation
 64 | shall be based on the prior year's tax roll of each county.

65 | ~~(3)~~~~(2)~~ No assessment shall exceed just value.

66 | ~~(4)~~~~(3)~~ After any change of ownership, as provided by
 67 | general law, homestead property shall be assessed at just value
 68 | as of January 1 of the following year, unless the provisions of
 69 | paragraph ~~(9)~~ ~~(8)~~ apply. Thereafter, the homestead shall be
 70 | assessed as provided in this subsection.

71 | ~~(5)~~~~(4)~~ New homestead property shall be assessed at just
 72 | value as of January 1 ~~1st~~ of the year following the
 73 | establishment of the homestead, unless the provisions of
 74 | paragraph ~~(9)~~ ~~(8)~~ apply. That assessment shall only change as
 75 | provided in this subsection.

76 | ~~(6)~~~~(5)~~ Changes, additions, reductions, or improvements to
 77 | homestead property shall be assessed as provided for by general
 78 | law; provided, however, after the adjustment for any change,
 79 | addition, reduction, or improvement, the property shall be
 80 | assessed as provided in this subsection.

81 | ~~(7)~~~~(6)~~ In the event of a termination of homestead status,
 82 | the property shall be assessed as provided by general law.

83 | ~~(8)~~~~(7)~~ The provisions of this amendment are severable. If
 84 | any of the provisions of this amendment shall be held

85 unconstitutional by any court of competent jurisdiction, the
 86 decision of such court shall not affect or impair any remaining
 87 provisions of this amendment.

88 (9)~~(8)~~a. A person who establishes a new homestead as of
 89 January 1, 2009, or January 1 of any subsequent year and who has
 90 received a homestead exemption pursuant to Section 6 of this
 91 Article as of January 1 of either of the two years immediately
 92 preceding the establishment of the new homestead is entitled to
 93 have the new homestead assessed at less than just value. If this
 94 revision is approved in January of 2008, a person who
 95 establishes a new homestead as of January 1, 2008, is entitled
 96 to have the new homestead assessed at less than just value only
 97 if that person received a homestead exemption on January 1,
 98 2007. The assessed value of the newly established homestead
 99 shall be determined as follows:

100 1. If the just value of the new homestead is greater than
 101 or equal to the just value of the prior homestead as of January
 102 1 of the year in which the prior homestead was abandoned, the
 103 assessed value of the new homestead shall be the just value of
 104 the new homestead minus an amount equal to the lesser of
 105 \$500,000 or the difference between the just value and the
 106 assessed value of the prior homestead as of January 1 of the
 107 year in which the prior homestead was abandoned. Thereafter, the
 108 homestead shall be assessed as provided in this subsection.

109 2. If the just value of the new homestead is less than the
 110 just value of the prior homestead as of January 1 of the year in
 111 which the prior homestead was abandoned, the assessed value of
 112 the new homestead shall be equal to the just value of the new

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113 homestead divided by the just value of the prior homestead and
 114 multiplied by the assessed value of the prior homestead.
 115 However, if the difference between the just value of the new
 116 homestead and the assessed value of the new homestead calculated
 117 pursuant to this sub-subparagraph is greater than \$500,000, the
 118 assessed value of the new homestead shall be increased so that
 119 the difference between the just value and the assessed value
 120 equals \$500,000. Thereafter, the homestead shall be assessed as
 121 provided in this subsection.

122 b. By general law and subject to conditions specified
 123 therein, the Legislature shall provide for application of this
 124 paragraph to property owned by more than one person.

125 (e) The legislature may, by general law, for assessment
 126 purposes and subject to the provisions of this subsection, allow
 127 counties and municipalities to authorize by ordinance that
 128 historic property may be assessed solely on the basis of
 129 character or use. Such character or use assessment shall apply
 130 only to the jurisdiction adopting the ordinance. The
 131 requirements for eligible properties must be specified by
 132 general law.

133 (f) A county may, in the manner prescribed by general law,
 134 provide for a reduction in the assessed value of homestead
 135 property to the extent of any increase in the assessed value of
 136 that property which results from the construction or
 137 reconstruction of the property for the purpose of providing
 138 living quarters for one or more natural or adoptive grandparents
 139 or parents of the owner of the property or of the owner's spouse
 140 if at least one of the grandparents or parents for whom the

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141 living quarters are provided is 62 years of age or older. Such a
 142 reduction may not exceed the lesser of the following:

143 (1) The increase in assessed value resulting from
 144 construction or reconstruction of the property.

145 (2) Twenty percent of the total assessed value of the
 146 property as improved.

147 (g) For all levies other than school district levies,
 148 assessments of residential real property, as defined by general
 149 law, which contains nine units or fewer and which is not subject
 150 to the assessment limitations set forth in subsections (a)
 151 through (d) shall change only as provided in this subsection.

152 (1) Assessments subject to this subsection shall be
 153 changed annually on the date of assessment provided by law; but
 154 those changes in assessments shall not exceed ten percent ~~(10%)~~
 155 of the assessment for the prior year.

156 (2) No assessment shall exceed just value.

157 (3) After a change of ownership or control, as defined by
 158 general law, including any change of ownership of a legal entity
 159 that owns the property, such property shall be assessed at just
 160 value as of the next assessment date. Thereafter, such property
 161 shall be assessed as provided in this subsection.

162 (4) Changes, additions, reductions, or improvements to
 163 such property shall be assessed as provided for by general law;
 164 however, after the adjustment for any change, addition,
 165 reduction, or improvement, the property shall be assessed as
 166 provided in this subsection.

167 (h) For all levies other than school district levies,
 168 assessments of real property that is not subject to the

169 assessment limitations set forth in subsections (a) through (d)
 170 and (g) shall change only as provided in this subsection.

171 (1) Assessments subject to this subsection shall be
 172 changed annually on the date of assessment provided by law; but
 173 those changes in assessments shall not exceed ten percent ~~(10%)~~
 174 of the assessment for the prior year.

175 (2) No assessment shall exceed just value.

176 (3) The legislature must provide that such property shall
 177 be assessed at just value as of the next assessment date after a
 178 qualifying improvement, as defined by general law, is made to
 179 such property. Thereafter, such property shall be assessed as
 180 provided in this subsection.

181 (4) The legislature may provide that such property shall
 182 be assessed at just value as of the next assessment date after a
 183 change of ownership or control, as defined by general law,
 184 including any change of ownership of the legal entity that owns
 185 the property. Thereafter, such property shall be assessed as
 186 provided in this subsection.

187 (5) Changes, additions, reductions, or improvements to
 188 such property shall be assessed as provided for by general law;
 189 however, after the adjustment for any change, addition,
 190 reduction, or improvement, the property shall be assessed as
 191 provided in this subsection.

192 (i) The legislature, by general law and subject to
 193 conditions specified therein, may prohibit the consideration of
 194 the following in the determination of the assessed value of real
 195 property used for residential purposes:

196 (1) Any change or improvement made for the purpose of

197 improving the property's resistance to wind damage.

198 (2) The installation of a renewable energy source device.

199 (j)(1) The assessment of the following working waterfront
200 properties shall be based upon the current use of the property:

201 a. Land used predominantly for commercial fishing
202 purposes.

203 b. Land that is accessible to the public and used for
204 vessel launches into waters that are navigable.

205 c. Marinas and drystacks that are open to the public.

206 d. Water-dependent marine manufacturing facilities,
207 commercial fishing facilities, and marine vessel construction
208 and repair facilities and their support activities.

209 (2) The assessment benefit provided by this subsection is
210 subject to conditions and limitations and reasonable definitions
211 as specified by the legislature by general law.

212 BE IT FURTHER RESOLVED that the following statement be
213 placed on the ballot:

214 CONSTITUTIONAL AMENDMENT

215 ARTICLE VII, SECTION 4

216 ASSESSMENT OF HOMESTEAD PROPERTY OWNED BY LOW-INCOME SENIOR
217 CITIZENS.—Currently, counties and municipalities may grant an
218 additional homestead exemption to a person who is 65 years of
219 age or older and who has a household income of \$20,000 or less.
220 This proposed amendment to the State Constitution authorizes
221 counties and municipalities to limit the assessments of the
222 homesteads of persons receiving such additional exemption to the
223 assessed value of the property in the prior year if the just
224 value of the property is less than the just value of the

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225 | property on the preceding January 1 or is equal to or less than
 226 | 150 percent of the average just value of homestead property in
 227 | the respective county or municipality. As such, if authorized by
 228 | a county or municipality, these individuals will not be required
 229 | to pay more county or municipal ad valorem taxes than they paid
 230 | in the prior year if the value of their homestead decreases or
 231 | an increase in value of their homestead property does not result
 232 | in the value of the property exceeding the average just value of
 233 | homestead property in the county or municipality by more than
 234 | 150 percent.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103 Transfer of Tax Liability
SPONSOR(S): Wood
TIED BILLS: None **IDEN./SIM. BILLS:** SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Cary	Bond
2) Economic Affairs Committee	18 Y, 0 N	Fennell	Tinker
3) Finance & Tax Committee		Flieger <i>BF</i>	Langston <i>gj</i>

SUMMARY ANALYSIS

In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. Current law provides three different statutes relating to state tax liability on a transfer of a business to new ownership. One applies to sales tax liability, one to communications services tax, and one to state taxes in general.

HB 103 repeals the two specific statutes (sales tax and communications services tax) and amends the statute relating to all taxes owed to the state. The repeal of those statutes removes the criminal penalties for violation of those provisions.

The bill allows the transferee to take the business without assuming the transferor's liabilities under either of the following circumstances:

- If the transferor and the transferee do not have insiders in common, the transferor may provide the transferee a receipt or certificate of compliance from the Department of Revenue showing that a transferor has not received notice of audit, has filed all required tax returns, and has paid the tax due from those returns; or
- The transferee or transferor may request an audit of the transferor's books and records, to be completed within 90 days by the Department of Revenue, in order to find that a transferor is not liable for any outstanding tax liabilities.

The bill creates a new exemption from liability when the transferee is not an insider and the assets transferred are limited to:

- A one- to four-family residential real property and furnishing and fixtures within;
- Real property that has not been improved with a building; or
- Owner-occupied commercial real property.

This exception does not apply if such assets are accompanied by a transfer of other business assets.

On October 26, 2011, the Revenue Estimating Conference estimated that the bill will have a negative indeterminate impact on both state and local government revenues.

The bill is effective upon becoming law.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

When a person buys a business, the buyer (transferee) is liable for unpaid business taxes, such as sales taxes, that the seller (transferor) owes.¹ In 2000, the Legislature passed s. 202.31, F.S., governing the transfer of tax liability related to communications services companies.² In 2010, the Legislature enacted s. 213.758, F.S., governing the transfer of tax liability in other situations.

Together, ss. 202.31, 212.10, and 213.758, F.S. govern the transfer of tax liability for every tax administered by the Department of Revenue³ ("DOR"), excluding the corporate income tax. Section 213.758(2), F.S., provides that a taxpayer who is liable for any tax, interest, penalty, surcharge, or fee⁴ who quits a business without the benefit of a purchaser, successor, or assignee, or without transferring the business or stock of goods to a transferee must make a final return and pay the amount due within 15 days.

The transferee of more than 50 percent of a business is liable for any tax owed by the transferor unless the transferor provides the transferee a receipt or certificate from DOR showing that the transferor is not liable for taxes and the department conducts an audit and finds that the transferor is not liable for taxes. DOR may charge a fee to perform these audits and there is no time requirement to complete the audit.⁵ The maximum liability for a transferee is the greater of the fair market value of the business or the purchase price paid.⁶

Sections 202.31 and 212.10, F.S., govern the transfer of tax liability for communications and services tax and sales and use tax, respectively. The procedures pursuant to those statutes are substantially similar to those in s. 213.758, F.S. Sections 202.31 and s. 212.10, F.S., also include misdemeanor criminal penalties for violations of the tax transfer provisions contained in those statutes.

Section 213.758, F.S., does not impose liability on those transferees who take possession due to an involuntary transfer.⁷

Effect of Proposed Changes

In general, this bill repeals the tax liability statutes specific to sales and communications services businesses. In addition, the bill amends the statute relating to all taxes owed to the state in order to consolidate all transfer of tax liabilities provisions into a single section of the Florida Statutes.

Tax Liability

If the transferor and transferee do not have any insiders in common, this bill allows a transferee to avoid liability for the unpaid tax of the transferor if the transferee receives a "certificate of compliance" from DOR showing that the transferor has not received a notice of audit, has filed all required tax returns, and has paid all tax arising from those returns. The transferee may also be exempt from liability if DOR performs an audit and finds that the transferor has no tax liability. Either the transferee or

¹ See s. 212.10, F.S.

² See ss. 23.58, ch. 2000-260, L.O.F.

³ As listed in s. 213.05, F.S.

⁴ The statute refers to taxes, interest, penalties, surcharges, or fees pursuant to ch. 443, F.S., or described in s. 72.011(1), F.S., excluding the corporate income tax.

⁵ Section 213.758(4), F.S.

⁶ Section 213.758(6), F.S.

⁷ Section 213.758(1)(a) defines an involuntary transfer as a transfer due to the foreclosure by a non-insider, from eminent domain or condemnation actions, those involved in a bankruptcy proceeding, or to a financial institution to satisfy a debt.

transferor may request that DOR conduct such an audit, and if so requested, the audit must be completed within 90 days.⁸

This bill also creates a new exemption from liability when the transferee is not an insider and the assets transferred are limited to:

- A one- to four-family residential real property and furnishing and fixtures within;
- Real property that has not been improved with a building; or
- Owner-occupied commercial real property.

This exception does not apply if such assets are accompanied by a transfer of other business assets.

Under the bill, a circuit court shall issue a temporary injunction to enjoin further business activity by the taxpayer on the grounds of failure to pay taxes if DOR has requested such an injunction and provided the taxpayer with 20 days' written notice. Under the current law and the bill, the Department of Legal Affairs is authorized to seek an injunction from a circuit court at the request of DOR. Current law does not require notice before a court issues an injunction.

For transferees, the bill permits the Department of Legal Affairs, at the request of DOR, to seek an injunction from a circuit court to enjoin further business activity by the transferee on the grounds of failure to pay taxes if:

- The assessment against the transferee is final and either the time for contesting the assessment under s. 72.011, F.S., has passed or such a contest was filed and resulted in a final and nonappealable judgment sustaining the assessment; and
- DOR has provided at least 20 days' written notice of intention to seek an injunction.

Current law does not require a 20 day notice before a court issues an injunction against a transferee.

This bill provides that the maximum tax liability of the transferee is the greater of:

- The fair market value of the business, assets of the business, or stock of goods of the business, net of any liens or liability to non-insiders; and
- The purchase price paid for the business, assets of the business, or stock of goods of the business, net of any liens or liability to non-insiders.

Definitions

This bill defines the term "business" to require that a discrete division of a larger business be aggregated with all other divisions that are not separate legal entities. The definition of "financial institution" includes any person who controls, is controlled by, or is under common control with a financial institution.⁹ The term "insider" encompasses a member, manager, managing member of a limited liability company, or a relative of such a person, as defined in s. 726.102(11), F.S.¹⁰ The bill defines "stock of goods" as an inventory of a business held for sale to customers in the ordinary course of business. This bill defines "transfer" to include that a business is transferred when there is a transfer of more than 50 percent of the business, the assets of the business, or the stock of goods of the business. This bill defines "involuntary transfer" as a transfer of a business, assets of a business, or stock of goods of a business made without the consent of the transferor in the following situations:

⁸ Section 213.758(4)(a)2 authorizes the Department to charge a fee for an audit requested by the transferee or transferor. There is no set amount for the Department to charge and the Department has not promulgated rules to put a transferor or transferee on notice as to how much an audit will cost.

⁹ The statute currently uses "financial institution" solely as defined by s. 655.005, F.S.

¹⁰ Section 726.102(11), F.S. defines "relative" as "an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree."

- Foreclosure of a security interest of a non-insider;
- Eminent domain or condemnation;
- Dissolution of marriage, foreclosure under Chapter 702, F.S., or bankruptcy;
- A transfer to a financial institution if the transfer is made to satisfy transferor's debt to the financial institution; or
- A transfer to a third party to satisfy the transferor's debt to a financial institution, to the extent that it satisfies the indebtedness.

Repeal of Statutes

This bill repeals ss. 202.31 and 212.10, F.S. The repeal of these sections eliminates the misdemeanor criminal penalty provisions for violations of these sections.

Effective Date

This bill provides that the bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 213.758, F.S., relating to transfer of tax liabilities.

Section 2 amends s. 213.053, F.S., relating to confidentiality and record sharing.

Section 3 repeals s. 202.31, F.S., relating to sale of communications services businesses.

Section 4 repeals s. 212.10, F.S., relating to sale of sales (dealer) businesses.

Section 5 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On October 26, 2011, the Revenue Estimating Conference estimated the bill had an indeterminate negative fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On October 26, 2011, the Revenue Estimating Conference estimated the bill had an indeterminate negative fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the sales tax revenue collection abilities of local governments by exempting some transferees from tax liability under certain circumstances; however, bills determined to have an "insignificant fiscal impact" (which means an amount not greater than the average statewide population for the applicable fiscal year multiplied by 10 cents, which will be \$1.88 million for FY 2011-12) are exempt from the mandate provision.

If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law grants the Department of Revenue rulemaking authority to administer s. 213.758, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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29 liability when the transfer consists only of specified
30 assets; amending s. 213.053, F.S.; authorizing the
31 Department of Revenue to provide certain tax
32 information to a transferee against whom tax liability
33 is being asserted pursuant to s. 213.758, F.S.;

34 repealing s. 202.31, F.S., relating to the tax
35 liability and criminal liability of dealers of
36 communications services who make certain transfers
37 related to a communications services business;

38 repealing s. 212.10, F.S., relating to a dealer's tax
39 liability and criminal liability for sales tax when
40 certain transfers of a business occur; providing an
41 effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 213.758, Florida Statutes, is amended
46 to read:

47 213.758 Transfer of tax liabilities.—

48 (1) As used in this section, the term:

49 (a) "Business" means any activity regularly engaged in by
50 any person, or caused to be engaged in by any person, for the
51 purpose of private or public gain, benefit, or advantage. The
52 term does not include occasional or isolated sales or
53 transactions involving property or services by a person who does
54 not hold himself or herself out as engaged in business. A
55 discrete division or portion of a business is not a separate
56 business and must be aggregated with all other divisions or

57 | portions that constitute a business if the division or portion
 58 | is not a separate legal entity.

59 | (b) "Financial institution" means a financial institution
 60 | as defined in s. 655.005 and any person who controls, is
 61 | controlled by, or is under common control with a financial
 62 | institution as defined in s. 655.005.

63 | (c) "Insider" means:

64 | 1. Any person included within the meaning of insider as
 65 | used in s. 726.102(7); or

66 | 2. A manager of, a managing member of, or a person who
 67 | controls a transferor that is a limited liability company, or a
 68 | relative as defined in s. 726.102(11) of any such persons.

69 | (d)(a) "Involuntary transfer" means a transfer of a
 70 | business, assets of a business, or stock of goods of a business
 71 | made without the consent of the transferor, including, but not
 72 | limited to, a transfer:

73 | 1. That occurs due to the foreclosure of a security
 74 | interest issued to a person who is not an insider ~~as defined in~~
 75 | ~~s. 726.102;~~

76 | 2. That results from an eminent domain or condemnation
 77 | action;

78 | 3. Pursuant to chapter 61, chapter 702, or the United
 79 | States Bankruptcy Code;

80 | 4. To a financial institution, ~~as defined in s. 655.005,~~
 81 | if the transfer is made to satisfy the transferor's debt to the
 82 | financial institution; or

83 | 5. To a third party to the extent that the proceeds are
 84 | used to satisfy the transferor's indebtedness to a financial

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85 institution ~~as defined in s. 655.005~~. If the third party
86 receives assets worth more than the indebtedness, the transfer
87 of the excess may not be deemed an involuntary transfer.

88 (e) "Stock of goods" means the inventory of a business
89 held for sale to customers in the ordinary course of business.

90 (f) "Tax" means any tax, interest, penalty, surcharge, or
91 fee administered by the department pursuant to chapter 443 or
92 any of the chapters specified in s. 213.05, excluding chapter
93 220, the corporate income tax code.

94 (g)-(b) "Transfer" means every mode, direct or indirect,
95 with or without consideration, of disposing of or parting with a
96 business, assets of the business, or stock of goods of the
97 business, and includes, but is not limited to, assigning,
98 conveying, demising, gifting, granting, or selling, other than
99 to customers in the ordinary course of business, to a transferee
100 or to a group of transferees who are acting in concert. A
101 business is considered transferred when there is a transfer of
102 more than 50 percent of:

103 1. The business;

104 2. The assets of the business; or

105 3. The stock of goods of the business.

106 (2) A taxpayer engaged in a business who is liable for any
107 tax arising from the operation of that business, ~~interest,~~
108 ~~penalty, surcharge, or fee administered by the department~~
109 ~~pursuant to chapter 443 or described in s. 72.011(1),~~ ~~excluding~~
110 ~~corporate income tax,~~ and who quits the a business without the
111 benefit of a purchaser, successor, or assignee, or without
112 transferring the business, assets of the business, or stock of

113 | goods of a business to a transferee, must file a final return
 114 | for the business and make full payment of all taxes arising from
 115 | the operation of that business within 15 days after quitting the
 116 | business. ~~A taxpayer who fails to file a final return and make~~
 117 | ~~payment may not engage in any business in this state until the~~
 118 | ~~final return has been filed and all taxes, interest, or~~
 119 | ~~penalties due have been paid.~~ The Department of Legal Affairs
 120 | may seek an injunction at the request of the department to
 121 | prevent further business activity of a taxpayer who fails to
 122 | file a final return and make payment of the taxes associated
 123 | with the operation of the business until such taxes tax,
 124 | ~~interest, or penalties~~ are paid. A temporary injunction
 125 | enjoining further business activity shall ~~may~~ be granted by a
 126 | circuit court if the department has provided at least 20 days'
 127 | prior written notice to the taxpayer ~~without notice.~~

128 | (3) A taxpayer who is liable for taxes with respect to a
 129 | business, ~~interest, or penalties levied under chapter 443 or any~~
 130 | ~~of the chapters specified in s. 213.05, excluding corporate~~
 131 | ~~income tax,~~ who transfers the taxpayer's business, assets of the
 132 | business, or stock of goods of the business, must file a final
 133 | return and make full payment within 15 days after the date of
 134 | transfer.

135 | (4) (a) A transferee, or a group of transferees acting in
 136 | concert, of more than 50 percent of a business, assets of a
 137 | business, or stock of goods of a business is liable for any
 138 | unpaid tax, ~~interest, or penalties~~ owed by the transferor
 139 | arising from the operation of that business unless:

140 | 1.a. The transferor provides a receipt or certificate of

141 compliance from the department to the transferee showing that
 142 the transferor has not received a notice of audit and the
 143 transferor has filed all required tax returns and has paid all
 144 tax arising is not liable for taxes, interest, or penalties from
 145 the operation of the business identified on the returns filed;
 146 and

147 b. There were no insiders in common between the transferor
 148 and the transferee at the time of the transfer; or

149 2. The department finds that the transferor is not liable
 150 for taxes, interest, or penalties after an audit of the
 151 transferor's books and records. The audit may be requested by
 152 the transferee or the transferor and, if not done pursuant to
 153 the certified audit program under s. 213.285, must be completed
 154 by the department within 90 days after the records are made
 155 available to the department. The department may charge a fee for
 156 the cost of the audit if it has not issued a notice of intent to
 157 audit by the time the request for the audit is received.

158 (b) A transferee may withhold a portion of the
 159 consideration for a business, assets of the business, or stock
 160 of goods of the business to pay the tax ~~taxes, interest, or~~
 161 ~~penalties~~ owed to the state by the transferor taxpayer arising
 162 from the operation of the business. The transferee shall pay the
 163 withheld consideration to the state within 30 days after the
 164 date of the transfer. If the consideration withheld is less than
 165 the transferor's liability, the transferor remains liable for
 166 the deficiency.

167 (c) ~~A transferee who acquires the business or stock of~~
 168 ~~goods and fails to pay the taxes, interest, or penalties due may~~

169 ~~not engage in any business in the state until the taxes,~~
 170 ~~interest, or penalties are paid.~~ The Department of Legal Affairs
 171 may seek an injunction at the request of the department to
 172 prevent further business activity of a transferee who is liable
 173 for unpaid tax of a transferor and who fails to pay or cause to
 174 be paid the transferee's maximum liability for such tax due
 175 until such maximum liability for the tax is, ~~interest, or~~
 176 ~~penalties are paid.~~ A temporary injunction enjoining further
 177 business activity shall ~~may~~ be granted by a circuit court if:
 178 ~~without notice.~~

179 1. The assessment against the transferee is final and
 180 either:

181 a. The time for filing a contest under s. 72.011 has
 182 expired; or

183 b. Any contest filed pursuant to s. 72.011 resulted in a
 184 final and nonappealable judgment sustaining any part of the
 185 assessment; and

186 2. The department has provided at least 20 days' prior
 187 written notice to the transferee of its intention to seek an
 188 injunction.

189 (5) The transferee, or transferees acting in concert, of
 190 more than 50 percent of a business, assets of the business, or
 191 stock of goods of a business who are liable for any tax pursuant
 192 to this section shall be ~~are~~ jointly and severally liable with
 193 the transferor for the payment of the tax ~~taxes, interest, or~~
 194 ~~penalties~~ owed to the state from the operation of the business
 195 by the transferor up to the transferee's or transferees' maximum
 196 liability for such tax due.

197 (6) The maximum liability of a transferee pursuant to this
 198 section is equal to the fair market value of the business,
 199 assets of the business, or stock of goods of the business
 200 ~~property~~ transferred to the transferee or the total purchase
 201 price paid by the transferee for the business, assets of the
 202 business, or stock of goods of the business, whichever is
 203 greater.

204 (a) The fair market value must be determined net of any
 205 liens or liabilities, with the exception of liens or liabilities
 206 owed to insiders.

207 (b) The total purchase price must be determined net of
 208 liens and liabilities against the assets, with the exception of:

- 209 1. Liens or liabilities owed to insiders.
- 210 2. Liens or liabilities assumed by the transferee that are
 211 not liens or liabilities owed to insiders.

212 (7) After notice by the department of transferee liability
 213 under this section, the transferee has 60 days within which to
 214 file an action as provided in chapter 72.

215 (8) This section does not impose liability on a transferee
 216 of a business, assets of a business, or stock of goods of a
 217 business when:

218 (a) The transfer is pursuant to an involuntary transfer;
 219 or

220 (b) The transferee is not an insider, and the asset
 221 transferred consists solely of a one- to four-family residential
 222 real property and furnishings and fixtures therein; real
 223 property that has not been improved with any building; or owner-
 224 occupied commercial real property; and, in each case, is not

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225 accompanied by a transfer of other assets of the business.

226 (9) The department may adopt rules necessary to administer
227 and enforce this section.

228 Section 2. Subsection (17) of section 213.053, Florida
229 Statutes, is amended to read:

230 213.053 Confidentiality and information sharing.—

231 (17) The department may provide to the person against whom
232 transferee liability is being asserted pursuant to s. 213.758
233 ~~212.10(1)~~ information relating to the basis of the claim.

234 Section 3. Section 202.31, Florida Statutes, is repealed.

235 Section 4. Section 212.10, Florida Statutes, is repealed.

236 Section 5. This act shall take effect upon becoming a law.