

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	Langston
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