

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HJR 169 Additional Homestead Tax Exemption for Seniors

**SPONSOR(S):** Finance & Tax Committee, Oliva and others

**TIED BILLS:** HB 357 **IDEN./SIM. BILLS:** SJR 1740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	22 Y, 0 N, As CS	Aldridge	Langston
2) Economic Affairs Committee	17 Y, 0 N	Nelson	Tinker

### SUMMARY ANALYSIS

The joint resolution proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to grant an additional homestead tax exemption equal to the assessed value of homestead property to certain low income seniors.

To be eligible for the additional homestead exemption, the following conditions must be met:

- the county or municipality must have granted the exemption by ordinance;
- the property must have a just (market) value of less than \$250,000;
- the owner must have title to the property and maintained his or her permanent residence thereon for at least 25 years;
- the owner must be age 65 years or older; and
- the owner's annual household income must be less than \$27,030.

The general law implementing the constitutional provision must require counties and municipalities choosing to provide the additional homestead exemption to do so by ordinance. The general law must also provide for the periodic adjustment of the income limitation for changes in the cost of living.

The Revenue Estimating Conference has not estimated the revenue impacts of the joint resolution; however, the revenue impact on local governments would be negative to an indeterminate degree. This is because the constitutional amendment proposed by the joint resolution must first:

- be approved by the voters,
- be implemented by general law, and
- be adopted by ordinance by counties or municipalities wishing to offer the additional exemption.

The joint resolution would have a nonrecurring expenditure 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:

#### Present Situation

##### *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.<sup>1</sup> 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:<sup>2</sup>

- 10 mills for county purposes;
- 10 mills for municipal purposes;
- 10 mills for school purposes;
- a millage fixed by law for a county furnishing municipal services; and
- 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>1</sup> Section 9, Art. VII of the State Constitution.

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

<sup>3</sup> Section 200.001(7), F.S.

<sup>4</sup> Section 197.383, F.S.

<sup>5</sup> Section 195.002, F.S.

<sup>6</sup> Chapter 195, F.S.

<sup>7</sup> Section 2, Art. VII of the State Constitution.

<sup>8</sup> 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).

<sup>9</sup> Section 4, Art. VII of the State Constitution, authorizes valuation differentials, which are based on character or use of property.

## *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.<sup>12</sup> 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.<sup>13</sup>

## *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).<sup>14</sup> Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to that homestead.<sup>15</sup>

## *Section 193.155, Florida Statutes*

In 1994, the Legislature implemented the “Save Our Homes” amendment in s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994. 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.

## *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.<sup>16</sup> The exemption only applies to taxes levied by the county or city enacting the exemption.<sup>17</sup>

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.<sup>18</sup> All senior homesteaders may defer the portion of their tax levy exceeding three-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

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<sup>10</sup> Section 4 (c), Art. VII of the State Constitution, authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of three 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 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.

<sup>11</sup> Section 3, Art. VII, of the State Constitution, 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.

<sup>12</sup> Section 6, Art. VII of the State Constitution.

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

<sup>14</sup> Section 4(d), Art. VII of the State Constitution.

<sup>15</sup> *Id.*

<sup>16</sup> Section 6, Art. VII of the State Constitution. See, also s. 196.075, F.S. For 2012, that indexed household income amount is \$27,030. See: <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited February 4, 2012)

<sup>17</sup> Section 196.075(4), F.S.

<sup>18</sup> Section 197.243, F.S.

percent. Deferred tax and interest up to seven percent are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

## Proposed Changes

This joint resolution proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to grant an additional homestead tax exemption equal to the assessed value of homestead property to certain low income seniors.

To be eligible for the additional homestead exemption, the following conditions must be met:

- the county or municipality must have granted the exemption by ordinance;
- the property must have a just (market) value of less than \$250,000;
- the owner must have title to the property and must have maintained his or her permanent residence thereon for at least 25 years;<sup>19</sup>
- the owner must be age 65 years or older; and
- the owner's annual household income must be less than \$27,030.<sup>20</sup>

The general law implementing the constitutional provision must require counties and municipalities choosing to provide the additional homestead exemption to do so by ordinance. The general law must also provide for the periodic adjustment of the income limitation for changes in the cost of living.

## 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.<sup>21</sup> The Division estimates the cost of advertising the proposed constitutional amendment would be \$93,403.<sup>22</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impacts of this joint resolution on local governments. However, the amendment, if passed, would only affect a county or municipality that chose to allow the additional low income senior homestead exemption.

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<sup>19</sup> See, the III. COMMENTS, A. CONSTITUTIONAL ISSUES, portion of this analysis regarding durational residency requirements.

<sup>20</sup>HJR 169 provides that the income limitation is the same as the limitation for the current additional homestead exemption for low income seniors authorized in s. 6, Art. VII of the State Constitution. The income limitation for that exemption is set by general law in s. 196.075(3), F.S. Under that provision 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 2012, that indexed household income amount is \$27,030. See: <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited February 4, 2012).

<sup>21</sup>Section 5(d), Art. XI of the State Constitution.

<sup>22</sup> Department of State, *House Joint Resolution 169 (2012) Fiscal Analysis* (October 11, 2011).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The resolution could reduce property taxes for 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:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to Joint Resolutions.

2. Other:

Joint Resolutions

Section 1, Art. XI of the State Constitution provides the Legislature with authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. A proposed amendment must be submitted to the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State's office, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house and limited to a single amendment, it is submitted at an earlier special election held more than 90 days after such filing.<sup>23</sup>

Durational Residency Requirements

By limiting an additional homestead tax exemption to low income seniors who have maintained a residence for at least 25 years, the proposal contemplated by CS/HJR 169 establishes a classification that is determined by a durational residency requirement. When state governments create classifications in an attempt to grant privileges to particular groups, both the state and federal equal protection clauses can enter into an evaluation of the constitutionality of legislation.

Courts grant great deference to legislative goals and directives when reviewing classifications under an equal protection analysis, applying a rational basis test. A classification generally is upheld unless it bears no rational relationship to a legitimate government interest. Durational residency requirements may be subject to strict scrutiny during this review, and, accordingly, could be vulnerable when challenged.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>23</sup> Section 5, Art. XI of the State Constitution.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 7, 2012, the Finance & Tax Committee adopted an amendment that changes the additional homestead tax exemption that the Legislature may, by general law, allow counties or municipalities to grant by:

- specifying that the exemption is equal to the assessed value of the property;
- limiting eligibility to property with a market value less than \$250,000;
- requiring 25 years of residence in the homestead to be eligible;
- making the income limitation the same as the income limitation for the current low income senior exemption.

The amendment also makes conforming and technical changes to the title and ballot summary.

The analysis has been updated to reflect the Committee Substitute.