

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1163 Ad Valorem Taxation
SPONSOR(S): Appropriations Committee, Finance & Tax Committee, Dorworth and others
TIED BILLS: CS/HJR 381, HB 1053 **IDEN./SIM. BILLS:** SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	18 Y, 3 N, As CS	Aldridge	Langston
2) Appropriations Committee	22 Y, 0 N, As CS	Voyles	Leznoff
3) Economic Affairs Committee		Nelson	Tinker

SUMMARY ANALYSIS

CS/CS/HB 1163 implements the proposed constitutional amendment contained in CS/CS/CS/CS/HJR 381. Substantive provisions of the bill become effective upon approval of the constitutional amendment by the voters.

Non-Homestead Assessment Limitation

This bill amends the Florida Statutes to reflect the provisions of CS/CS/CS/CS/HJR 381 that reduce the annual growth in assessment limitation on certain non-homestead property from 10 percent to three percent upon voter approval of the amendment. The bill clarifies that the non-homestead assessment limitation does not apply to improvements made to the property in question. If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012. If approved by the voters with the 2012 general election, the provision takes effect on January 1, 2013.

Additional Homestead Exemption for Specified Homesteaders

The bill creates a new statutory section that sets forth the requirements contained in CS/CS/CS/CS/HJR 381 allowing individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution, and have not received a homestead exemption in the previous three calendar years, to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property up to \$200,000. This exemption applies only to non-school property taxes. The exemption is reduced each year and diminishes to zero in five years or less. The bill provides for an application process for the exemption and sets forth requirements that must be met in order to retain the exemption upon addition of another person to the title of an affected property.

If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012, and be available for properties purchased on or after January 1, 2011. If approved by the voters at the 2012 general election, the provision will take effect on January 1, 2013, and be available for properties purchased on or after January 1, 2012.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

The Revenue Estimating Conference has estimated that the provisions of the constitutional amendment relating to the non-homestead assessment limit and the additional homestead exemption, as implemented by this bill beginning in 2012, will have a negative revenue impact on non-school property taxes of \$176.6 million in FY 2012-13, growing to \$1,211.9 million by FY 2015-16, assuming current millage rates. See, the FISCAL IMPACT section of this analysis for information on implementation in 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

Section 4, Art. VII of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer would pay a willing seller for property in an arm’s length transaction.¹

Assessed Value

The State 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 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).¹⁰ Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued “Save Our Homes” benefit to the new homestead.¹¹

¹ Section 193.011, F.S. *See, also, Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

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

³ Section 4(a), Art. VII of the State Constitution.

⁴ Section 4(b), Art. VII of the State Constitution.

⁵ Section 4(c), Art. VII of the State Constitution.

⁶ Section 4(e), Art. VII of the State Constitution.

⁷ Section 4(f), Art. VII of the State Constitution.

⁸ Section 4(i), Art. VII of the State Constitution.

⁹ Section 4(j), Art. VII of the State Constitution.

¹⁰ Section 4(d), Art. VII of the State Constitution.

¹¹ Section 4(d), Art. VII of the State Constitution.

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 Consumer Price Index. 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), 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 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 shall 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

¹² Chapter 94-353, L.O.F.

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 12S-9.0062, F.A.C., pursuant to its general rulemaking authority under s. 195.927, F.S. Section 195.027, F.S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and that the Legislature intends that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and that the administration will be uniform, just and otherwise in compliance with the requirements of general law and the constitution.

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.*

initiative and 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 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.²⁰

Additional Assessment Limitations

Sections 4(g) and (h), Art. VII of the State 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. 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. Section 27, Art. XII of the State 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

Section 6, Art. VII of the State 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 homesteads' assessed value between \$50,000 and \$75,000, excluding school district levies.

Other Exemptions

Section 3, Art. VII of the State 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 conservation purposes.²⁶ In

¹⁹ *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."

²⁰ *Id.* at ¶ 20.

²¹ Section 3(a), Art. VII of the State Constitution.

²² Section 3(b), Art. VII of the State Constitution.

²³ Section 3(c), Art. VII of the State Constitution.

²⁴ Section 3(d), Art. VII of the State Constitution.

²⁵ Section 3(e), Art. VII of the State Constitution.

²⁶ Section 3(f), Art. VII of the State Constitution.

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 bill implements the constitutional amendments contained in CS/CS/CS/CS/HJR 381. Substantive provisions of the bill become effective upon approval of those amendments by the voters.

Upon voter approval, CS/CS/CS/CS/HJR 381 will reduce from 10 percent to three percent, the annual limitation on growth in assessed value on certain non-homestead property. Additionally, CS/CS/CS/CS/HJR 381 allows individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution, and have not received a homestead exemption in the previous three years, to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property. The additional exemption will apply to all property taxes other than school district taxes, and cannot exceed \$200,000. The exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the Save Our Homes Benefit (the difference between just value and assessed value determined under Save Our Homes).

The bill provides contingent language to become effective, whether voted on and approved with the 2012 presidential preference primary or the 2012 general election.

Non-Homestead Assessment Limitation

The bill amends ss. 193.1544 and 193.1555, F.S., to replace the current 10 percent annual limitation on growth in assessed value on certain non-homestead property with a three percent limitation. The bill replaces the beginning year of the new growth limitation, depending on the election in which the voters approve CS/CS/CS/CS/HJR 381. The bill clarifies that the non-homestead assessment limitation does not apply to improvements made to the property in question. If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012. If approved by the voters with the 2012 general election, the provision takes effect on January 1, 2013.

Additional Homestead Exemption for Specified Homesteaders

The bill creates s. 196.078, F.S., where it defines “first-time homesteader” as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three calendar years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applies. The new section also sets forth the limitations and requirements of the new exemption as described in CS/CS/CS/CS/HJR 381.

The bill provides a mechanism whereby a person must apply for the exemption with the property appraiser no later than March 1 of the year for which the exemption would apply on a form prescribed by the Department of Revenue. The bill provides that if the amendment contained in CS/CS/CS/CS/HJR 381 is approved by the voters with the 2012 presidential preference primary, that the application date will be June 1 for 2012 only.

The bill provides that in order for the exemption to be retained upon the addition of another person to the title to the property, the additional person must submit, no later than the subsequent March 1, a sworn statement attesting that he or she has not owned property that received the homestead exemption provided in s. 196.031, F.S., in the prior three calendar years.

²⁷ Section 3(g), Art. VII of the State Constitution.

The bill specifies that ss. 196.131²⁸ and 196.161,²⁹ F.S., apply to the “first-time homesteader” exemption.

If approved by the voters with the 2012 presidential preference primary, these provisions will take effect on January 1, 2012, and be available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, the provisions will take effect on January 1, 2013, and be available for properties purchased on or after January 1, 2012.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

B. SECTION DIRECTORY:

- Section 1: Amends s. 193.1554(3), F.S., to reduce the annual growth in assessment limitation on nonhomestead residential property from 10 percent to three percent and to provide that assessed value of nonhomestead residential property may not increase if just value has declined, beginning in 2013 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the general election in 2012.
- Section 2: Amends s. 193.1554(3), F.S., to reduce the annual growth in assessment limitation on nonhomestead residential property from 10 percent to three percent and to provide that assessed value of nonhomestead residential property may not increase if just value has declined, beginning in 2012 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the presidential preference primary in 2012.
- Section 3: Amends s. 193.1555, F.S., to reduce the annual growth in assessment limitation on certain nonresidential property from 10 percent to three percent and to provide that assessed value of certain nonhomestead property may not increase if just value has declined, beginning in 2013 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the general election in 2012.
- Section 4: Amends s. 193.1555, F.S., to reduce the annual growth in assessment limitation on certain nonresidential property from 10 percent to three percent and to provide that assessed value of certain nonhomestead property may not increase if just value has declined, beginning in 2012 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the presidential preference primary in 2012.
- Section 5: Creates 196.078, F.S., creating an additional homestead exemption for “first-time” homesteaders, beginning in 2013 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the general election in 2012.
- Section 6: Creates 196.078, F.S., creating an additional homestead exemption for “first-time” homesteaders, beginning in 2012 if voters approve the constitutional amendment contained in CS/CS/CS/CS/HJR 381 with the presidential preference primary in 2012.
- Section 7: Authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.
- Section 8: Provides effective dates.

²⁸ Section 196.131, F.S., relates to homestead exemption claims, including requiring the property appraiser to provide a receipt and providing penalties for persons knowingly and willfully giving false information for the purpose of claiming a homestead exemption.

²⁹ Section 196.161, F.S., provides provisions whereby the property appraiser, under certain circumstances, may place a tax lien on property where a person who was not entitled to a homestead exemption was granted a homestead exemption within the prior 10 years.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Implementation in 2012

The Revenue Estimating Conference has estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit and the additional homestead exemption, as implemented by this bill beginning in 2012, will have a negative revenue impact on non-school property taxes of \$176.6 million in FY 2012-13, growing to \$1,211.9 million by FY 2015-16, **assuming current millage rates**.

Implementation in 2013

The Revenue Estimating Conference has estimated that the provisions of the constitutional amendment, relating to the non-homestead assessment limit, the additional homestead exemption, and the prohibition of assessment increases when market value declines for homestead property, as implemented by this bill beginning in 2013, will have a negative revenue impact on property taxes of \$301.6 million in FY 2013-14, growing to \$1,127.6 million by FY 2015-16, **assuming current millage rates**.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10 percent to three percent. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill implements a constitutional amendment to which the mandates provision of s. 18, Art. VII of the State Constitution, does not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2011, the Finance & Tax Committee adopted a strike-all amendment that added six sections to the bill, amending ss. 193.155, 193.1544, and 193.1555, F.S., to reflect the provisions of CS/CS/CS/HJR 381 that 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.

On April 15, 2011, the Appropriations Committee adopted a strike-all amendment that:

- removes two sections of the bill, relating to the prohibition in increases in the assessed value of homestead property and certain non-homestead property in any year where the market value of the property decreases;
- clarifies that the non-homestead assessment limitation does not apply to improvements made to the property in question; and
- provides that if the amendment contained in CS/CS/CS/CS/HJR 381 is approved by the voters with the 2012 presidential preference primary, the first time homesteader application date will be June 1 for 2012 only.

This analysis has been updated to reflect CS/CS/HB 1163.