

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 07D-01 Constitutional Amendment Property Tax  
**SPONSOR(S):** Government Efficiency & Accountability Council and Attkisson  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 0 N	Diez-Arguelles/Jacobik	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This House Joint Resolution (HJR) provides a number of changes to the property tax system in Florida, as follows:

- Increases the homestead exemption by \$25,000 of the value of the home from \$50,000 to \$75,000 for all tax levies except school district tax levies;
- Provides an exemption for first-time homebuyers for all tax levies except school district tax levies;
- Exempts homestead property owned by low-income seniors from all property taxes;
- Provides for the transfer of the Save Our Homes accrued benefit for all tax levies except school district tax levies;
- Provides a \$25,000 exemption for tangible personal property;
- Allows affordable housing subject to rent restrictions imposed by a governmental agency to be assessed as provided by general law;
- Allows working waterfronts to be assessed as provided by general law;
- Requires the legislature to limit the authority of local governments, with the exception of school districts, to increase property taxes; and
- Requires that property appraisers be elected, even in charter counties.

The HJR will take effect upon approval by the electorate and will operate retroactively to January 1, 2008, if approved in a special election to be held on January 29, 2008, or if approved in the November 2008 general election will take effect on January 1, 2009.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The HJR increases the homestead exemption for all levies except school district levies; creates an additional exemption for first-time Florida homesteaders; allows homeowners who move to transfer their Save Our Homes benefit; creates an additional exemption for low-income seniors; allows the legislature to provide for the assessment of working waterfront and affordable housing properties at less than just value; creates a \$25,000 exemption for tangible personal property; and requires the Legislature to limit local property tax increases.

### B. EFFECT OF PROPOSED CHANGES:

#### **CURRENT SITUATION**

Article VII of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property,<sup>1</sup> and directs the legislature to establish requirements that local governments must follow when levying and administering ad valorem property taxes. The constitution requires that all ad valorem taxation be at a uniform rate within each taxing district<sup>2</sup> and that property be assessed at just value (fair market value) unless a different assessment standard is provided by the constitution.<sup>3</sup>

Following is a description of the current situation for the issues addressed in the HJR.

#### ***Homestead Exemption***

Subsection 6 (a)-(c) of Art. VII of the Florida Constitution provides that every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation up to the assessed value of \$25,000.

In 2006 there were 4,368,937 homesteads in Florida, and the homestead exemption reduced the 2006 tax roll by \$108.9 billion.

#### ***Save Our Homes***

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution, popularly known as the Save Our Homes amendment. Beginning with the 1994 tax roll, this amendment limited the annual increase in assessments of homestead property to the increase in the Consumer Price Index or 3 percent, whichever is lower. The Save Our Homes limitation first applied to the January 1, 1995 assessment.

The Save Our Homes limitation applies for as long as the property remains the homestead of the owner. After any change in ownership, homestead property must be assessed at just value as of January 1 of the following year. Thereafter, the property is subject to the Save Our Homes assessment limitation. New homestead property must be assessed at just value as of January 1 of the first year the property owner establishes homestead. Thereafter, the property is subject to the Save Our Homes assessment limitation. Changes, additions, reductions, and improvements to homestead property are

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<sup>1</sup> Sections 1(a) and 9(a), Art. VII, Fla. Const.

<sup>2</sup> Section 2, Art. VII, Fla. Const.

<sup>3</sup> Section 4, Art. VII, Fla. Const.

assessed at full value, but after its initial assessment this property is also subject to the Save Our Homes assessment limitation. If homestead status is terminated the property is assessed at just value.

In *Smith v. Welton*,<sup>4</sup> the First District Court of Appeal described the purpose of the Save Our Homes Amendment as follow::

The purpose of the amendment is to encourage the preservation of homestead property in face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption, exemption from forced sale, and the inheritance and alienation of homestead.

In the twelve years since Save Our Homes first limited the assessment of homestead property, its impact on the assessed value of this property has far exceeded the original expectations of such impact. In 1997, the second year of assessment limitations, Save Our Homes reduced the statewide assessed value of homestead property by 3 percent. In 2006, Save Our Homes reduced homestead just value by more than 38 percent. The \$405 billion reduction from Save Our Homes in 2006 equals approximately 25 percent of total taxable value.

### ***Tangible Personal Property***

Tangible personal property is singled out for special treatment in the Constitution. Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes are excluded from ad valorem taxation.<sup>5</sup> Household goods up to \$1,000 in value are exempt.<sup>6</sup> Renewable energy source devices may be exempted by general law for 10 years after installation.<sup>7</sup> Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, classified for tax purposes, or exempted by general law.<sup>8</sup> Tangible personal property not specifically exempt from taxation is subject to ad valorem taxation.

Section 193.152, F.S., requires that tax returns be filed for tangible personal property in the county where the property is located. The Department of Revenue is directed to promulgate rules to ensure that all railroad and utility property is properly returned in the appropriate county. However, the evaluation and assessment of utility property in each county is the duty of the property appraiser. Department of Revenue form DR-405 requires that a separate return must be filed by a taxpayer for each location in the county, except for owners of vending machines, propane tanks and similar free-standing property at many locations, who may submit a single return.

In 2006, 1,293,043 tangible personal property tax returns were filed, with a total taxable value of \$103.7 billion. The 997,109 returns with taxable amounts less than \$25,000 accounted for only \$4.5 billion of the total taxable value.

### ***Affordable Housing***

The cost of housing has risen much faster in recent years than household income. From 2003 through 2005 the affordability of housing fell throughout the state.<sup>9</sup> In 2003, the median household had sufficient income to purchase a single-family home selling at the median price in 52 counties; by 2005 this was true in only 18 counties. In 2005, 5 counties – Miami-Dade, Collier, Franklin, Walton, and Monroe – had

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<sup>4</sup> 710 So. 2d 135, 137 (Fla. App. 1998)

<sup>5</sup> Art. VII, sec. 1(b), Fla. Const.

<sup>6</sup> Art. VII, sec. 3(b), Fla. Const.

<sup>7</sup> Art. VII, sec. 3(d), Fla. Const.

<sup>8</sup> Art. VII, sec. 4(b), Fla. Const.

<sup>9</sup> The State of Florida's Housing 2006, Shimberg Center for Affordable Housing, 2007.

a median household income less than half of what was needed to buy a median-priced single-family home. Florida has more than 1 million households that qualify as extremely-low-income households.<sup>10</sup>

Documentary stamp tax revenue supports several state-funded programs through the Florida Housing Finance Corporation. The Florida Housing Finance Corporation is also responsible for allocation and distribution of federal low-income housing tax credits. Community Land Trusts are charitable organizations that build homes on land they own and then sell the improvements to a limited-income person or persons, subject to a 99-year ground lease.

The Florida Constitution provides no exception to the just value standard for assessment of property in Affordable Housing programs. Current law, provides that in assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits, shall be considered income to the property, and the actual rental income from rent-restricted units shall be recognized by the property appraiser.<sup>11</sup> Current law also provides a property tax exemption for property used to provide affordable housing for eligible individuals if the property is owned entirely by a charitable nonprofit entity meeting certain federal criteria.<sup>12</sup> HB 1375, enacted in the 2007 legislative session, authorizes a county or municipality to adopt an ordinance to allow for the deferral of property taxes and non-ad valorem assessments if the owners of the property are operating, rehabilitating, or renovating affordable rental housing property. The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed.

### **Working Waterfronts**

Current law provides a definition of “Recreational and commercial working waterfront” to mean a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in s. 509.242(1), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Seaports are excluded from the definition.<sup>13</sup>

Counties and cities may allow tax deferral of the taxes imposed by working waterfronts<sup>14</sup>. Only the taxes levied by the city or county granting the deferral can be deferred. The city or county can determine the:

- Percentage of taxes to be deferred,
- Type of working waterfront property that can defer taxes, and
- The location of the property that may defer taxes.

Tax deferrals and other liens may not exceed 85% of assessed value and the primary mortgage may not exceed 70% of assessed value. The deferred tax and interest (variable up to 9.5%) are due when:

- the property is sold,
- the required property insurance is not maintained, or
- the property ceases to be used as working waterfront.

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<sup>10</sup> *See id.*

<sup>11</sup> S. 193.017, F.S.

<sup>12</sup> S. 196.1978, F.S.

<sup>13</sup> S. 342.07, F.S.

<sup>14</sup> S. 197.303, F.S.

For coastal counties, the future land use element of comprehensive planning must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial working waterfronts as defined in s. 342.07, F.S.<sup>15</sup>

Public access to navigable water is diminishing. Commercial working waterfronts face increasing expenses, including taxes and insurance. Establishing new working waterfronts with public access may not be financially feasible.

### ***Low-Income Seniors***

There were 1.2 million homesteads in Florida owned by persons 65 or older in 2006. Based on U.S. Census data, 42% of the total population 65 and older has household income below \$25,000. There are 211,000 homesteads benefiting from the current exemption.

Any county or city may allow an additional homestead exemption of up to \$50,000 for any person 65 or older whose household income<sup>16</sup> does not exceed \$24,214 (in 2007). The income limit is increased each year by the percentage change in the Consumer Price Index. The exemption only applies to taxes levied by the county or city enacting the exemption.<sup>17</sup> In 2006, 53 counties and 178 municipalities had implemented the exemption. Prior to a constitutional amendment that became effective on January 1, 2007, the exemption was limited to \$25,000.

In addition, homeowners 65 and older, with household income less than \$24,214 in the prior year, may defer all ad valorem taxes and non-ad valorem assessments<sup>18</sup>. All senior homesteaders may defer the portion of their tax levy that exceeds 3% of household income. Tax deferrals and other liens may not exceed 85% of assessed value and the primary mortgage may not exceed 70%. Deferred tax and interest (up to 7%) are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

The household income definition used for the exemption does not capture all income. Household income is measured by "adjusted gross income" as reported to the Internal Revenue Service on the federal income tax return. This income measure excludes income from a number of sources, including income from tax-free bonds, most social security income, and some types of retirement income.

### ***Limitations on Ad Valorem Tax Increases***

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>19</sup> Local governments may levy ad valorem taxes subject to the following limitations:

- 10 mills for county purposes,
- 10 mills for municipal purposes,
- 10 mills for school purposes,
- 1 mill for water management purposes, except in Northwest Florida where the limit is .05 mill,
- Millage fixed by law for a county furnishing municipal services, and
- Millage authorized by law and approved by voters for special districts.<sup>20</sup>

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.<sup>21</sup>

### ***Election of Property Appraisers***

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<sup>15</sup> S. 163.3177, F.S.

<sup>16</sup> As defined in s. 62 of the United States Internal Revenue Code.

<sup>17</sup> Art. VII, sec. 6(f), Fla. Const., and s. 196.075, F.S.

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

<sup>19</sup> Art. VII, sec. 1(a), Fla. Const.

<sup>20</sup> Art. VII, sec. 9, Fla. Const. A mill is equal to \$1 per \$1,000 of value, or .001. A tax rate of 10 mills is equal to 1%.

<sup>21</sup> Art. VII, sec 9(b), Fla. Const.

Section 1(d) of Art. VIII of the Florida Constitution provides that every county shall have a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. These county officers are elected for terms of four years, unless provided otherwise by a county charter or special law approved by the voters, in which case they may be chosen as specified by the charter or special law. Presently, the Miami-Dade County has the only non-elected property appraiser in the state.

## **PROPOSED CHANGES**

### ***Tangible Personal Property***

The HJR provides an exemption from ad valorem taxes to tangible personal property (TPP) of \$25,000.

### ***Portability of Save Our Homes Benefit***

The HJR provides that homestead property owners will be able to transfer their Save Our Homes benefit to a new homestead within two years of giving up their previous homestead. If the new homestead is more valuable than the old one the entire benefit can be transferred; if the new homestead is less valuable the transferable benefit will be proportional to the value of the new homestead. In either case, the benefit that may be transferred is limited to \$1 million. (For those persons who gave up their homestead in 2007, the benefit may be transferred if they apply for a new homestead January 1, 2008 or January 1, 2009.)

The transferred benefit does not apply to school taxes.

### ***Affordable Housing***

The HJR allows real property used to provide affordable housing subject to rent restrictions imposed by a government agency to be assessed as provided by general law.

The limited assessments will not apply to school district tax levies.

### ***Working Waterfronts***

The HJR allows land that is used exclusively for commercial fishing purposes or that is open to the public and used predominantly for commercial water-dependent activities or for public access to waters that are navigable to be assessed as provided by general law. "Water-dependent activity" is defined as an activity that can be conducted only on, in, over, or adjacent to waters that are navigable and that require direct access to water and involve the use of water as an integral part of the activity.

The limited assessments will not apply to school district tax levies.

### ***Double Homestead Exemption***

The HJR provides an additional \$25,000 homestead exemption that applies to a properties value between \$50,000 and \$75,000.

This exemption does not apply to school district tax levies.

### ***First-time Homebuyers***

First-time homebuyers in Florida that qualify for a homestead exemption will be eligible for an additional exemption equal to 25 percent of the value of their new home, with a maximum exemption equal to 25 percent of the county median home value. The amount of the exemption will decrease each year by the amount of the Save Our Homes benefit received by the property. This exemption is available to 2007 first-time homebuyers who qualify for a homestead exemption January 1, 2008.

This exemption does not apply to school district tax levies.

### ***Low-Income Senior Exemption***

Every person 65 or older whose household income, as defined by the legislature, is less than \$23,604 (adjusted annually for inflation) will be totally exempt from ad valorem taxes on their homestead property.

This provision applies to all tax levies, including school district levies.

### ***Local Government Property Tax Limitation***

The HJR requires that the legislature limit the authority of local governments, with the exception of school districts, to increase property taxes.

### ***Election of Property Appraisers***

The HJR requires that all property appraisers to be elected.

### ***Effective Date***

The HJR will take effect upon approval by the electorate and will operate retroactively to January 1, 2008, if approved in a special election early in 2008, or if approved in the November 2008 general election will take effect on January 1, 2009.

C. SECTION DIRECTORY: Not applicable to a joint resolution.

## **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:**

If the changes to the State Constitution in the House Joint resolution are approved by the voters, the ad valorem tax base will be reduced. The Revenue Estimating Conference has not considered these issues.

At current millage rates, staff estimates that this reduction in the tax base will result in reduced tax revenues to local governments in the amounts shown in the table below.

Revenue Impacts by Issue (\$ Millions)					
	2008-09	2009-10	2010-11	2011-12	4 year total
Double Homestead Exemption	(876)	(888)	(900)	(907)	(3,571)
Portability	(184)	(445)	(666)	(899)	(2,195)
First-time Florida Homebuyer	(65)	(149)	(221)	(264)	(699)
Low income Senior Exemption	(629)	(643)	(658)	(675)	(2,606)
Affordable Housing	(45)	(46)	(47)	(48)	(186)
Working Waterfronts	--	(44)	(46)	(49)	(138)
Tangible Personal Property	(177)	(179)	(181)	(182)	(719)
Total	(1,977)	(2,394)	(2,718)	(3,024)	(10,114)

These estimates consider the interaction between the different components. Estimates for each component were it being implemented alone may be different.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers will experience lower taxes.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to joint resolutions.

2. Other:

In 2006, the Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The report focused primarily on the federal constitutional issues raised by the proposed alternatives to the Save Our Homes amendment, which limits property tax assessment increases on homestead property. The study did not examine specifically the portability proposal included in this House Joint Resolution.

The key findings of the report were that portability may provide opportunities for legal challenge based on the Commerce Clause, the "Interstate" Privileges and Immunities Clause, and the Right to Travel. If portability is adopted and later held to be unconstitutional, the discrimination or burden it created would have to be eliminated on a prospective basis and remedied through meaningful backward-looking relief on a retrospective basis which could entail either a refund or any other remedy that cures the discrimination, e.g., taxing the previously favored class on a retroactive basis.



The first-time Florida homeowner exemption and additional \$25,000 homestead exemption created by this House Joint Resolution may mitigate some or all of the issues identified in the legal analysis of portability.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On October 15, 2007, the House Government Efficiency & Accountability Council adopted 7 amendments to the proposed PCB. The amendments may be summarized as follows:

Amendment 1. Clarified the language limiting portability to persons who transferred a homestead after January 1, 2007.

Amendment 2. Clarified that the \$1 million limitation applies to the amount of Save Our Homes benefit that may be transferred.

Amendment 3. Clarified that the lower assessment for working waterfront and affordable housing property will not apply to school property taxes.

Amendment 4. Provided for the repeal of the homestead exemption if a constitutional amendment is adopted that allows assessment of property at less than just value. The constitution provides that the homestead exemption is repealed if an amendment to the constitution provides for homesteads to be assessed at a percentage of just value.

Amendment 5. Clarified that a person who previously owned a Florida homestead does not qualify for the new first-time Florida homeowners exemption.

Amendment 6. Corrected the description of the Joint Resolution in the effective date section.

Amendment 7. Title amendment.