

Finance and Tax Committee

Thursday, November 5, 2015

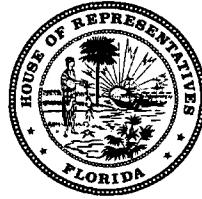
2:00 p.m. – 4:00 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Committee



Steve Crisafulli
Speaker

Matt Gaetz
Chair

AGENDA

November 5, 2015
2:00 p.m. – 4:00 p.m.
Morris Hall


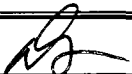
- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration on the following bills:**
HJR 275 Homestead Tax Exemption/Senior, Low-income, Long-term Residents by Avila
HB 277 County and Municipality Property Tax Exemption by Avila
- IV. **Consideration on the following proposed committee bills:**
PCB FTC 16-01 -- Ad Valorem Taxation
PCB FTC 16-02 -- Local Government Capital Recovery
- V. Presentation on Tobacco Tax Issues by the Department of Business and Professional Regulation
- VI. Presentation of Renewable Energy Tax Credits by the Department of Agriculture and Consumer Services
- VII. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 275 Homestead Tax Exemption/Senior, Low-income, Long-term Residents

SPONSOR(S): Avila

TIED BILLS: HB 277 **IDEN./SIM. BILLS:** SJR 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Dugan 	Langston 
2) Local Government Affairs Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Article VII, section 6(d)(2) of the Florida Constitution provides that counties and municipalities, if authorized by general law, may grant an additional homestead exemption equal to the assessed value of property to any person who:

- has the legal or equitable title to real estate with a just value less than \$250,000,
- has maintained thereon the permanent residence of the owner for not less than 25 years,
- has attained age 65, and
- whose household income does not exceed \$20,000.

If the property's just value rises above \$250,000, the person no longer qualifies for the additional exemption.

The joint resolution proposes an amendment to the Florida Constitution to limit the just value determination, for purposes of the exemption, to the value at the time of the owner's initial application for the exemption.

The proposed constitutional amendment is effective January 3, 2017, if approved by the voters.

On October 16, 2015, the Revenue Estimating Conference determined the proposed constitutional amendment has an indeterminate revenue impact on counties and municipalities, reflecting the need for approval by the voters and the ability of local governments to choose whether or not to allow the exemption in their jurisdiction.

Based on 2014 advertising costs, the Division of Elections within the Department of State has estimated the full publication costs for advertising the proposed constitutional amendment to be approximately \$133,000. This would be paid from non-recurring General Revenue funds.

For the proposed constitutional amendment to be placed on the ballot at the general election in November 2016, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

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.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁶

Article VII, section 6 of the Florida 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 homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

Article VII, section 6(d) of the Florida Constitution provides that counties and municipalities, if authorized by general law, may grant either or both of the following additional homestead exemptions:

- An exemption not exceeding \$50,000 to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, and who has attained age 65, and whose household income, as defined by general law, does not exceed \$20,000;⁷ or
- An exemption equal to the assessed value of the property to any person who has the legal or equitable title to real estate with a just value less than \$250,000, and who has maintained thereon the permanent residence of the owner for not less than 25 years, and who has attained age 65, and whose household income does not exceed \$20,000.⁸

The Legislature implemented these provisions in general law through s. 196.075, F.S., allowing counties and municipalities the discretion to grant the exemptions. Counties and municipalities may grant either or

¹ Fla. Const. art. VII, s. 1(a).

² Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Fla. Const. art. VII, s. 4.

⁴ Fla. Const. art. VII, ss. 3, 4, and 6.

⁵ s. 196.031, F.S.

⁶ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

⁷ Ch. 99-341, Laws of Fla. (HB 291).

⁸ Ch. 2012-193, Laws of Fla. (HB 7097).

both of these exemptions through the adoption of an ordinance.⁹ The \$20,000 income limitation is annually adjusted for changes in cost of living.¹⁰ The income limitation in 2015 is \$28,448.

For 2015, there are 21 counties that grant the low income, long-time resident assessed value exemption, totaling \$451,574,217 in exempt taxable value; in addition, 13 counties contain at least one municipality that grant the exemption for 2015, totaling \$179,894,174 in exempt taxable value.¹¹ The table below illustrates the number of exemptions and exempt taxable value.

County	County Exemption		Municipal Exemptions ¹²	
	Count	Value	Count	Value
Bay	162	\$ 9,280,441	16	\$ 905,558
Broward		not authorized	475	\$ 19,337,090
Clay		not authorized	25	\$ 1,749,144
Columbia	35	\$ 1,868,732		
Miami-Dade	7,834	\$ 225,040,488	9,552	\$ 110,750,383
Escambia	426	\$ 13,377,459	57	\$ 1,971,205
Flagler	100	\$ 6,838,060		
Gilchrist	91	\$ 3,375,107		
Gulf	11	\$ 347,459		
Hernando	208	\$ 8,114,775		
Hillsborough	3,338	\$ 107,063,281	1,228	\$ 31,333,626
Jackson	5	\$ 445,624		
Lake	128	\$ 4,145,690		
Lee	233	\$ 7,302,100		
Leon	347	\$ 12,899,214	406	\$ 6,336,193
Madison	18	\$ 1,028,706		
Manatee	0	\$0	1	\$ 109,302
Monroe	33	\$ 1,056,766	8	\$ 115,872
Nassau	37	\$ 3,838,427		
Orange	171	\$ 10,612,072		
Putnam	716	\$ 18,442,634	121	\$ 2,203,715
Santa Rosa	31	\$ 2,398,682	5	\$ 427,564
Volusia	576	\$ 14,098,500	144	\$ 4,092,780
Walton		not authorized	14	\$561,742
Total	14,539	\$ 451,574,217	12,052	\$ 179,894,174

Effect of Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution with respect to the low-income, long-time resident, additional homestead exemption in article VII, section 6(d)(2). Specifically, the amendment proposes to limit the just value determination, for purposes of the exemption, to the value at the time of the owner's initial application for the exemption. The effect of the amendment is to allow a low-income, long-time resident to continue receiving the exemption if the homestead's just value rises above \$250,000.

The proposed constitutional amendment is effective January 3, 2017, if approved by the voters.

⁹ s. 196.075(4), F.S.

¹⁰ s. 196.075(3), F.S.

¹¹ Revenue Estimating Conference, Impact Conference, Homestead Exemption up to \$250,000: HJR 275/HB 277 (October 16, 2015).

¹² The municipal exemption column is incomplete because some municipalities did not report the information; also, certain municipalities grant the exemption but no one has applied or is eligible.

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:

Article XI, s. 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. Based on 2014 advertising costs, the Division of Elections within the Department of State has estimated the full publication costs for advertising the proposed constitutional amendment to be approximately \$133,000. This would be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On October 16, 2015, the Revenue Estimating Conference determined the proposed constitutional amendment has an indeterminate fiscal impact due to the requirement for a statewide referendum, and the ability of local governments to choose whether or not to allow the exemption in their jurisdiction.

However, the conference estimated that, if approved in the referendum, and if all counties and municipalities currently allowing the exemption continue to do so, the impact on local government revenues would be $-\$0.5$ million in Fiscal Year 2017-18, growing to $-\$1.2$ million Fiscal Year 2020-21. If all counties and municipalities in the state were to adopt the exemption as amended by this legislation, the estimated statewide impact (excluding school and special district levies, which are not authorized to grant this exemption) is $-\$1.6$ million in 2017-18, growing to $-\$4.2$ million in 2020-21.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate, certain long-time residents could maintain property tax relief regardless of increases in the just value of the homestead property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.¹³ The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.¹⁴

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹³ Fla. Const. art. XI, s. 1.

¹⁴ Fla. Const. art. XI, s. 5.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to revise the homestead tax exemption that may be granted by counties or municipalities, if authorized by general law, for the assessed value of property with a just value less than \$250,000 and owned by persons age 65 or older who meet certain residence and income requirements to specify that just value shall be determined at the time of the owner's initial application for the exemption.

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

That the following amendment to Section 6 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 6. Homestead exemptions.—

(a) 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 thereon, except assessments for

27 special benefits, up to the assessed valuation of twenty-five
 28 thousand dollars and, for all levies other than school district
 29 levies, on the assessed valuation greater than fifty thousand
 30 dollars and up to seventy-five thousand dollars, upon
 31 establishment of right thereto in the manner prescribed by law.
 32 The real estate may be held by legal or equitable title, by the
 33 entireties, jointly, in common, as a condominium, or indirectly
 34 by stock ownership or membership representing the owner's or
 35 member's proprietary interest in a corporation owning a fee or a
 36 leasehold initially in excess of ninety-eight years. The
 37 exemption shall not apply with respect to any assessment roll
 38 until such roll is first determined to be in compliance with the
 39 provisions of section 4 by a state agency designated by general
 40 law. This exemption is repealed on the effective date of any
 41 amendment to this Article which provides for the assessment of
 42 homestead property at less than just value.

43 (b) Not more than one exemption shall be allowed any
 44 individual or family unit or with respect to any residential
 45 unit. No exemption shall exceed the value of the real estate
 46 assessable to the owner or, in case of ownership through stock
 47 or membership in a corporation, the value of the proportion
 48 which the interest in the corporation bears to the assessed
 49 value of the property.

50 (c) By general law and subject to conditions specified
 51 therein, the Legislature may provide to renters, who are
 52 permanent residents, ad valorem tax relief on all ad valorem tax

53 levies. Such ad valorem tax relief shall be in the form and
 54 amount established by general law.

55 (d) The legislature may, by general law, allow counties or
 56 municipalities, for the purpose of their respective tax levies
 57 and subject to the provisions of general law, to grant either or
 58 both of the following additional homestead tax exemptions:

59 (1) An exemption not exceeding fifty thousand dollars to a
 60 ~~any~~ person who has the legal or equitable title to real estate
 61 and maintains thereon the permanent residence of the owner, and
 62 who has attained age sixty-five, and whose household income, as
 63 defined by general law, does not exceed twenty thousand dollars;
 64 or

65 (2) An exemption equal to the assessed value of the
 66 property to a ~~any~~ person who has the legal or equitable title to
 67 real estate with a just value less than two hundred and fifty
 68 thousand dollars, as determined at the time of the owner's
 69 initial application for the exemption, and who has maintained
 70 thereon the permanent residence of the owner for not less than
 71 twenty-five years, and who has attained age sixty-five, and
 72 whose household income does not exceed the income limitation
 73 prescribed in paragraph (1).

74
 75 The general law must allow counties and municipalities to grant
 76 these additional exemptions, within the limits prescribed in
 77 this subsection, by ordinance adopted in the manner prescribed
 78 by general law, and must provide for the periodic adjustment of

79 | the income limitation prescribed in this subsection for changes
 80 | in the cost of living.

81 | (e) Each veteran who is age 65 or older who is partially
 82 | or totally permanently disabled shall receive a discount from
 83 | the amount of the ad valorem tax otherwise owed on homestead
 84 | property the veteran owns and resides in if the disability was
 85 | combat related and the veteran was honorably discharged upon
 86 | separation from military service. The discount shall be in a
 87 | percentage equal to the percentage of the veteran's permanent,
 88 | service-connected disability as determined by the United States
 89 | Department of Veterans Affairs. To qualify for the discount
 90 | granted by this subsection, an applicant must submit to the
 91 | county property appraiser, by March 1, an official letter from
 92 | the United States Department of Veterans Affairs stating the
 93 | percentage of the veteran's service-connected disability and
 94 | such evidence that reasonably identifies the disability as
 95 | combat related and a copy of the veteran's honorable discharge.
 96 | If the property appraiser denies the request for a discount, the
 97 | appraiser must notify the applicant in writing of the reasons
 98 | for the denial, and the veteran may reapply. The Legislature
 99 | may, by general law, waive the annual application requirement in
 100 | subsequent years. This subsection is self-executing and does not
 101 | require implementing legislation.

102 | (f) By general law and subject to conditions and
 103 | limitations specified therein, the Legislature may provide ad
 104 | valorem tax relief equal to the total amount or a portion of the

105 ad valorem tax otherwise owed on homestead property to the:

106 (1) Surviving spouse of a veteran who died from service-
 107 connected causes while on active duty as a member of the United
 108 States Armed Forces.

109 (2) Surviving spouse of a first responder who died in the
 110 line of duty.

111 (3) As used in this subsection and as further defined by
 112 general law, the term:

113 a. "First responder" means a law enforcement officer, a
 114 correctional officer, a firefighter, an emergency medical
 115 technician, or a paramedic.

116 b. "In the line of duty" means arising out of and in the
 117 actual performance of duty required by employment as a first
 118 responder.

119 BE IT FURTHER RESOLVED that the following statement be
 120 placed on the ballot:

121 CONSTITUTIONAL AMENDMENT

122 ARTICLE VII, SECTION 6

123 HOMESTEAD TAX EXEMPTION FOR CERTAIN SENIOR, LOW-INCOME,
 124 LONG-TERM RESIDENTS; DETERMINATION OF JUST VALUE.—Proposing an
 125 amendment to the State Constitution to revise the homestead tax
 126 exemption that may be granted by counties or municipalities, if
 127 authorized by general law, for the assessed value of property
 128 with a just value less than \$250,000 and owned by a person age
 129 65 or older who meets certain residence and income requirements

HJR 275

2016

130 | to specify that just value shall be determined at the time of
131 | the owner's initial application for the exemption.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
 2 Representative Avila offered the following:

Amendment (with title amendment)

5 Remove everything after the resolving clause and insert:
 6 That the following amendment to Section 6 of Article VII and the
 7 creation of Section 34 of Article XII of the State Constitution
 8 are agreed to and shall be submitted to the electors of this
 9 state for approval or rejection at the next general election or
 10 at an earlier special election specifically authorized by law
 11 for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

15 (a) Every person who has the legal or equitable title to
 16 real estate and maintains thereon the permanent residence of the
 17 owner, or another legally or naturally dependent upon the owner,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

18 shall be exempt from taxation thereon, except assessments for
19 special benefits, up to the assessed valuation of twenty-five
20 thousand dollars and, for all levies other than school district
21 levies, on the assessed valuation greater than fifty thousand
22 dollars and up to seventy-five thousand dollars, upon
23 establishment of right thereto in the manner prescribed by law.
24 The real estate may be held by legal or equitable title, by the
25 entireties, jointly, in common, as a condominium, or indirectly
26 by stock ownership or membership representing the owner's or
27 member's proprietary interest in a corporation owning a fee or a
28 leasehold initially in excess of ninety-eight years. The
29 exemption shall not apply with respect to any assessment roll
30 until such roll is first determined to be in compliance with the
31 provisions of section 4 by a state agency designated by general
32 law. This exemption is repealed on the effective date of any
33 amendment to this Article which provides for the assessment of
34 homestead property at less than just value.

35 (b) Not more than one exemption shall be allowed any
36 individual or family unit or with respect to any residential
37 unit. No exemption shall exceed the value of the real estate
38 assessable to the owner or, in case of ownership through stock
39 or membership in a corporation, the value of the proportion
40 which the interest in the corporation bears to the assessed
41 value of the property.

42 (c) By general law and subject to conditions specified
43 therein, the Legislature may provide to renters, who are

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

44 permanent residents, ad valorem tax relief on all ad valorem tax
45 levies. Such ad valorem tax relief shall be in the form and
46 amount established by general law.

47 (d) The legislature may, by general law, allow counties or
48 municipalities, for the purpose of their respective tax levies
49 and subject to the provisions of general law, to grant either or
50 both of the following additional homestead tax exemptions:

51 (1) An exemption not exceeding fifty thousand dollars to a
52 any person who has the legal or equitable title to real estate
53 and maintains thereon the permanent residence of the owner, and
54 who has attained age sixty-five, and whose household income, as
55 defined by general law, does not exceed twenty thousand dollars;
56 or

57 (2) An exemption equal to the assessed value of the
58 property to a any person who has the legal or equitable title to
59 real estate with a just value less than two hundred and fifty
60 thousand dollars, as determined in the first tax year that the
61 owner applies for and is eligible for the exemption, and who has
62 maintained thereon the permanent residence of the owner for not
63 less than twenty-five years, and who has attained age sixty-
64 five, and whose household income does not exceed the income
65 limitation prescribed in paragraph (1).

66
67 The general law must allow counties and municipalities to grant
68 these additional exemptions, within the limits prescribed in
69 this subsection, by ordinance adopted in the manner prescribed

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

70 by general law, and must provide for the periodic adjustment of
71 the income limitation prescribed in this subsection for changes
72 in the cost of living.

73 (e) Each veteran who is age 65 or older who is partially
74 or totally permanently disabled shall receive a discount from
75 the amount of the ad valorem tax otherwise owed on homestead
76 property the veteran owns and resides in if the disability was
77 combat related and the veteran was honorably discharged upon
78 separation from military service. The discount shall be in a
79 percentage equal to the percentage of the veteran's permanent,
80 service-connected disability as determined by the United States
81 Department of Veterans Affairs. To qualify for the discount
82 granted by this subsection, an applicant must submit to the
83 county property appraiser, by March 1, an official letter from
84 the United States Department of Veterans Affairs stating the
85 percentage of the veteran's service-connected disability and
86 such evidence that reasonably identifies the disability as
87 combat related and a copy of the veteran's honorable discharge.
88 If the property appraiser denies the request for a discount, the
89 appraiser must notify the applicant in writing of the reasons
90 for the denial, and the veteran may reapply. The Legislature
91 may, by general law, waive the annual application requirement in
92 subsequent years. This subsection is self-executing and does not
93 require implementing legislation.

94 (f) By general law and subject to conditions and
95 limitations specified therein, the Legislature may provide ad

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

121 BE IT FURTHER RESOLVED that the following statement be
122 placed on the ballot:

123 CONSTITUTIONAL AMENDMENT

124 ARTICLE VII, SECTION 6

125 HOMESTEAD TAX EXEMPTION FOR CERTAIN SENIOR, LOW-INCOME,
126 LONG-TERM RESIDENTS; DETERMINATION OF JUST VALUE.—Proposing to
127 amend the State Constitution, revising the homestead tax
128 exemption for assessed value of property with just value under
129 \$250,000 owned by certain low-income, long-time residents, that
130 may be granted by counties or municipalities, to specify that
131 just value is determined in the first year the person applies
132 for and is eligible for the exemption. The amendment takes
133 effect January 1, 2017, and applies retroactively to exemptions
134 granted prior to January 1, 2017.

135

136

137

T I T L E A M E N D M E N T

138

Remove everything before the resolving clause and insert:

139

A joint resolution proposing an amendment to Section 6 of
140 Article VII and the creation of Section 34 of Article XII of the
141 State Constitution to revise the homestead tax exemption that
142 may be granted by counties or municipalities, if authorized by
143 general law, for the assessed value of property with a just
144 value less than \$250,000 and owned by persons age 65 or older
145 who meet certain residence and income requirements to specify
146 that just value shall be determined in the first tax year that

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 275 (2016)

Amendment No. 1

147 the owner applies for and is eligible for the exemption, and to
148 provide retroactive application and an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 277 County and Municipality Property Tax Exemption
SPONSOR(S): Avila
TIED BILLS: HJR 275 **IDEN./SIM. BILLS:** SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Dugan <i>RJ</i>	Langston <i>GL</i>
2) Local Government Affairs Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The bill implements HJR 275, which proposes to amend article VII, section 6(d) of the Florida Constitution with respect to the current additional homestead exemption on the assessed value of property with a just value under \$250,000 that is owned by certain low-income, long-time residents, and that can be allowed by county and municipal governments. Specifically, the joint resolution proposes to limit the just value determination, for purposes of the exemption, to the value at the time of the owner's initial application for the exemption. Under current law, the exemption is implemented in general law through s. 196.075, F.S.

The bill amends s. 196.075(2), F.S., to limit the just value determination, for purposes of the exemption, to the value at the time of the owner's initial application for the exemption.

On October 16, 2015, the Revenue Estimating Conference determined the bill has an indeterminate revenue impact on counties and municipalities, reflecting the need for approval of HJR 275 by the voters and the ability of local governments to choose whether or not to allow the exemption in their jurisdiction.

The bill will take effect January 3, 2017, if HJR 275 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

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.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁶

Article VII, section 6 of the Florida 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 homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

Article VII, section 6(d) of the Florida Constitution provides that counties and municipalities, if authorized by general law, may grant either or both of the following additional homestead exemptions:

- An exemption not exceeding \$50,000 to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, and who has attained age 65, and whose household income, as defined by general law, does not exceed \$20,000;⁷ or
- An exemption equal to the assessed value of the property to any person who has the legal or equitable title to real estate with a just value less than \$250,000, and who has maintained thereon the permanent residence of the owner for not less than 25 years, and who has attained age 65, and whose household income does not exceed \$20,000.⁸

¹ Fla. Const. art. VII, s. 1(a).

² Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Fla. Const. art. VII, s. 4.

⁴ Fla. Const. art. VII, ss. 3, 4, and 6.

⁵ s. 196.031, F.S.

⁶ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

⁷ Ch. 99-341, Laws of Fla. (HB 291).

⁸ Ch. 2012-193, Laws of Fla. (HB 7097).

The Legislature implemented these provisions in general law through s. 196.075, F.S., allowing counties and municipalities the discretion to grant the exemptions. Counties and municipalities may grant either or both of these exemptions through the adoption of an ordinance.⁹ The \$20,000 income limitation is annually adjusted for changes in cost of living.¹⁰ The income limitation in 2015 is \$28,448.

For 2015, there are 21 counties that grant the low income, long-time resident assessed value exemption, totaling \$451,574,217 in exempt taxable value; in addition, 13 counties contain at least one municipality that grant the exemption for 2015, totaling \$179,894,174 in exempt taxable value.¹¹ The table below illustrates the number of exemptions and exempt taxable value.

County	County Exemption		Municipal Exemptions ¹²	
	Count	Value	Count	Value
Bay	162	\$ 9,280,441	16	\$ 905,558
Broward		not authorized	475	\$ 19,337,090
Clay		not authorized	25	\$ 1,749,144
Columbia	35	\$ 1,868,732		
Miami-Dade	7,834	\$ 225,040,488	9,552	\$ 110,750,383
Escambia	426	\$ 13,377,459	57	\$ 1,971,205
Flagler	100	\$ 6,838,060		
Gilchrist	91	\$ 3,375,107		
Gulf	11	\$ 347,459		
Hernando	208	\$ 8,114,775		
Hillsborough	3,338	\$ 107,063,281	1,228	\$ 31,333,626
Jackson	5	\$ 445,624		
Lake	128	\$ 4,145,690		
Lee	233	\$ 7,302,100		
Leon	347	\$ 12,899,214	406	\$ 6,336,193
Madison	18	\$ 1,028,706		
Manatee	0	\$0	1	\$ 109,302
Monroe	33	\$ 1,056,766	8	\$ 115,872
Nassau	37	\$ 3,838,427		
Orange	171	\$ 10,612,072		
Putnam	716	\$ 18,442,634	121	\$ 2,203,715
Santa Rosa	31	\$ 2,398,682	5	\$ 427,564
Volusia	576	\$ 14,098,500	144	\$ 4,092,780
Walton		not authorized	14	\$561,742
Total	14,539	\$ 451,574,217	12,052	\$ 179,894,174

Effect of Proposed Changes

The bill amends s. 196.075(2), F.S., to limit the just value determination, for purposes of the exemption, to the value at the time of the owner's initial application for the exemption. The effect of the amendment is to allow a low-income, long-time resident to continue receiving the exemption if the homestead's just value rises above \$250,000.

The bill is effective January 3, 2017, if approved by the voters.

⁹ s. 196.075(4), F.S.

¹⁰ s. 196.075(3), F.S.

¹¹ Revenue Estimating Conference, Impact Conference, Homestead Exemption up to \$250,000: HJR 275/HB 277 (October 16, 2015).

¹² The municipal exemption column is incomplete because some municipalities did not report the information; also, certain municipalities grant the exemption but no one has applied or is eligible.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.075(2), F.S., to limit the just value determination for the exemption.

Section 2. Provides and effective date.

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:

None.

2. Expenditures:

On October 16, 2015, the Revenue Estimating Conference determined the bill has an indeterminate fiscal impact due to the requirement for a statewide referendum to approve HJR 275, and the ability of local governments to choose whether or not to allow the exemption in their jurisdiction.

However, the conference estimated that, if approved in the referendum, and if all counties and municipalities currently allowing the exemption continue to do so, the impact on local government revenues would be -\$0.5 million in Fiscal Year 2017-18, growing to -\$1.2 million Fiscal Year 2020-21. If all counties and municipalities in the state were to adopt the exemption as amended by this legislation, the estimated statewide impact (excluding school and special district levies, which are not authorized to grant this exemption) is -\$1.6 million in 2017-18, growing to -\$4.2 million in 2020-21.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the bill becomes law, certain long-time residents could maintain property tax relief regardless of increases in the just value of the homestead property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to a county and municipality homestead
 3 tax exemption; amending s. 196.075, F.S.; revising the
 4 homestead tax exemption that may be adopted by a
 5 county or municipality by ordinance for the assessed
 6 value of property with a just value less than \$250,000
 7 which is owned by persons age 65 or older who meet
 8 certain residence and income requirements; specifying
 9 that just value shall be determined at the time of the
 10 owner's initial application for the exemption;
 11 providing a contingent effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (2) of section 196.075, Florida
 16 Statutes, is amended to read:

17 196.075 Additional homestead exemption for persons 65 and
 18 older.—

19 (2) In accordance with s. 6(d), Art. VII of the State
 20 Constitution, the board of county commissioners of any county or
 21 the governing authority of any municipality may adopt an
 22 ordinance to allow either or both of the following additional
 23 homestead exemptions:

24 (a) Up to \$50,000 for a ~~any~~ person who has the legal or
 25 equitable title to real estate and maintains thereon the
 26 permanent residence of the owner, who has attained age 65, and

27 whose household income does not exceed \$20,000.~~;~~ ~~or~~

28 (b) The amount of the assessed value of the property for a
 29 ~~any~~ person who has the legal or equitable title to real estate
 30 with a just value less than \$250,000, as determined at the time
 31 of the owner's initial application for the exemption, and who
 32 has maintained thereon the permanent residence of the owner for
 33 at least 25 years, who has attained age 65, and whose household
 34 income does not exceed the income limitation prescribed in
 35 paragraph (a), as calculated in subsection (3).

36 Section 2. This act shall take effect on the same date
 37 that HJR 275 or a similar joint resolution having substantially
 38 the same specific intent and purpose takes effect, if such joint
 39 resolution is approved by the electors at the general election
 40 to be held in November 2016 or at an earlier special election
 41 specifically authorized by law for that purpose.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 277 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative Avila offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (2) of section 196.075, Florida
7 Statutes, is amended to read:

8 196.075 Additional homestead exemption for persons 65 and
9 older.—

10 (2) In accordance with s. 6(d), Art. VII of the State
11 Constitution, the board of county commissioners of any county or
12 the governing authority of any municipality may adopt an
13 ordinance to allow either or both of the following additional
14 homestead exemptions:

15 (a) Up to \$50,000 for a ~~any~~ person who has the legal or
16 equitable title to real estate and maintains thereon the
17 permanent residence of the owner, who has attained age 65, and

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 277 (2016)

Amendment No. 1

18 whose household income does not exceed \$20,000. ~~or~~

19 (b) The amount of the assessed value of the property for a
20 any person who has the legal or equitable title to real estate
21 with a just value less than \$250,000, as determined in the first
22 tax year that the owner applies for and is eligible for the
23 exemption, and who has maintained thereon the permanent
24 residence of the owner for at least 25 years, who has attained
25 age 65, and whose household income does not exceed the income
26 limitation prescribed in paragraph (a), as calculated in
27 subsection (3).

28 Section 2. For purposes of s. 196.075(2)(b) as amended by
29 this act, the just value determination for any person who
30 received the exemption under s. 196.075(2)(b) prior to the
31 effective date of this act shall be the just value as determined
32 in the first tax year that the owner applied for and was
33 eligible for the exemption prior to the effective date of this
34 act. Such person may reapply for the exemption in subsequent
35 years, regardless of the current just value of his or her
36 homestead property.

37 Section 3. For purposes of s. 196.075(2)(b) as amended by
38 this act, any person who received the exemption under s.
39 196.075(2)(b) prior to the effective date of this act may apply
40 to the tax collector for a refund, pursuant to s. 197.182, for
41 any prior year in which the exemption was denied solely because
42 the just value of the homestead property was greater than
43 \$250,000. The refund for a year shall be equal to the difference

Amendment No. 1

44 between the previous tax liability for that year without the
45 exemption and their tax liability with the exemption.

46 Section 4. This act shall take effect on the same date
47 that HJR 275 or a similar joint resolution having substantially
48 the same specific intent and purpose takes effect, if such joint
49 resolution is approved by the electors at the general election
50 to be held in November 2016, and shall apply retroactively to
51 the 2013 tax roll for any person who received the exemption
52 under s. 196.075(2)(b) prior to the effective date of this act.
53

54 -----

55 T I T L E A M E N D M E N T

56 Remove everything before the enacting clause and insert:
57 An act relating to a county and municipality homestead tax
58 exemption; amending s. 196.075, F.S.; revising the homestead tax
59 exemption that may be adopted by a county or municipality by
60 ordinance for the assessed value of property with a just value
61 less than \$250,000 which is owned by persons age 65 or older who
62 meet certain residence and income requirements; specifying that
63 just value shall be determined in the first tax year that the
64 owner applies for and is eligible for the exemption; providing
65 for a refund of overpaid taxes in prior years; providing
66 retroactive application; providing a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 16-01 Ad Valorem Taxation
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Dugan <i>RD</i>	Langston <i>LS</i>

SUMMARY ANALYSIS

The Florida Constitution limits the annual growth in the assessed value of homestead properties to the lesser of three percent or the inflation rate. For certain non-homestead properties, the annual growth in the assessed value is limited to 10 percent. In certain circumstances, the assessed value of property might grow at a faster rate than the market value.

The joint resolution proposes a constitutional amendment to allow the Legislature to add an additional limit to the rate of growth for assessed value. If the joint resolution becomes law and is implemented by the Legislature, the growth rate of homestead property would be limited to the lesser of three percent, the inflation rate, or the percent change in the homestead property's just value if the change is greater than or equal to zero. The growth rate of certain non-homestead property would be limited to the lesser of 10 percent or the percent change in the non-homestead property's just value if the change is greater than or equal to zero.

The joint resolution also proposes to allow the Legislature by general law to 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. If created by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of a property decreases.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

This Revenue Estimating Conference has not estimated the fiscal impact of this bill. However, a similar measure from the 2015 Legislative Session was estimated to have a zero impact due to the need for approval by the electorate and further implementation by the Legislature.

Based on 2014 advertising costs, staff estimates the full publication costs for advertising the proposed constitutional amendment to be approximately \$266,000. This would be paid from non-recurring General Revenue funds.

For the proposed constitutional amendment to be placed on the ballot at the general election in November 2016, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Just Value

Article VII, section 4 of the Florida 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 Florida 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 article VII, section 4 of the Florida Constitution limits the amount a homestead property'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 This allows a differential between just value and assessed value to develop over time for a property. Homestead property owners who establish a new homestead may transfer up to \$500,000 of their accrued "Save Our Homes" benefit to that homestead.¹¹

¹ s. 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 art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

³ Fla. Const. art. VII, s. 4(a).

⁴ Fla. Const. art. VII, s. 4(b).

⁵ Fla. Const. art. VII, s. 4(c).

⁶ Fla. Const. art. VII, s. 4(e).

⁷ Fla. Const. art. VII, s. 4(f).

⁸ Fla. Const. art. VII, s. 4(i).

⁹ Fla. Const. art. VII, s. 4(j).

¹⁰ Fla. Const. art. VII, s. 4(d).

¹¹ Fla. Const. art. VII, s. 4(d).

Section 193.155, Florida Statutes

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 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."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) of the 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 property 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 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

¹² ch. 94-353, Laws of Fla.

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 12D-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.*

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 movement¹⁹ should be incorporated into the language of the rule to make it compatible with the language in article VII, section 4(c) of the Florida 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 article VII, section 4(c) of the Florida 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

Article VII, sections 4(g) and (h) of the Florida 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, respectively. 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. Article XII, section 27 of the Florida 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

Article VII, section 6 of the Florida 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 homestead property’s assessed value between \$50,000 and \$75,000, excluding school district levies.

Other Exemptions

Article VII, section 3 of the Florida 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

¹⁹ *Markham v. Department of Revenue, Case No. 95-1339RP (Fla. DOAH 1995)* (“[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 Fla. Const. art. VII, s. 3(a).

²² Fla. Const. art. VII, s. 3(b).

²³ Fla. Const. art. VII, s. 3(c).

²⁴ Fla. Const. art. VII, s. 3(d).

\$25,000 of its assessed value.²⁵ There is an exemption for real property dedicated in perpetuity for conservation purposes.²⁶ In 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 joint resolution proposes a constitutional amendment to allow the Legislature by general law to add an additional limit to the rate of growth for assessed value. If the joint resolution becomes law and is implemented by the Legislature, the growth rate of homestead property would be limited to the lesser of three percent, the inflation rate, or the percent change in the homestead property's just value if the change is greater than or equal to zero. The growth rate of non-homestead property currently eligible for the 10 percent annual assessment growth limit would be limited to the lesser of 10 percent or the percent change in the property's just value if the change is greater than or equal to zero.

The joint resolution also proposes to allow the Legislature by general law to prohibit increases in the assessed value of homestead property and non-homestead property currently eligible for the 10 percent annual assessment growth limit in any year where the market value of the property decreases. If created by general law, this provision would prevent what is commonly referred to as "recapture" in any year where the market value of a property decreases. The assessed value of such properties could still increase for unrelated reasons, such as an increase in just value due to improvements made to the homestead property.²⁸

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

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:

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State has not estimated the publication costs for advertising the joint resolution.

Based on 2014 advertising costs, staff estimates the full publication costs for advertising the proposed constitutional amendment to be approximately \$266,000. This would be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²⁵ Fla. Const. art. VII, s. 3(e).

²⁶ Fla. Const. art. VII, s. 3(f).

²⁷ Fla. Const. art. VII, s. 3(g).

²⁸ See, Art. VII, s. 4(d)(5) of the Florida Constitution.

The Revenue Estimating Conference has not estimated the fiscal impact of the bill. However, a similar measure from the 2015 Legislative Session was estimated to have a zero impact due to the need for approval by the electorate and further implementation by the Legislature.

Revenue Estimating Conference estimates from similar legislation in the 2015 Legislative Session indicate that, should the Legislature eventually choose to fully implement the provisions of the constitutional amendment, the annual recurring impact on property tax collections would be approximately \$87 million for schools, and at least \$128 million for non-school purposes, assuming current millage rates.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Upon voter approval and implementation by the Legislature, owners of homestead property and non-homestead residential rental and commercial real property will not experience increased property taxes in a year where the market value of the property decreases.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.²⁹ The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.³⁰

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁹ Fla. Const. art. XI, s. 1.

³⁰ Fla. Const. art. XI, s. 5.

Proposed "Recapture Rule" Changes

Homestead Examples

In all examples, inflation=2%

Example 1: Just Value +5%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$210,000	\$10,000 (+5%)
Assessed Value:			
Current Law	\$100,000	\$102,000	\$2,000 (+2%)
Proposal	\$100,000	\$102,000	\$2,000 (+2%)

Example 2: Just Value +1%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$202,000	\$2,000 (+1%)
Assessed Value:			
Current Law	\$100,000	\$102,000	\$2,000 (+2%)
Proposal	\$100,000	\$101,000	\$1,000 (+1%)

Example 3: Just Value 0%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$200,000	\$0 (0%)
Assessed Value:			
Current Law	\$100,000	\$102,000	\$2,000 (+2%)
Proposal	\$100,000	\$100,000	\$0 (0%)

Example 4: Just Value -5%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$190,000	-\$10,000 (-5%)
Assessed Value:			
Current Law	\$100,000	\$102,000	\$2,000 (+2%)
Proposal	\$100,000	\$100,000	\$0 (0%)

Proposed "Recapture Rule" Changes

Non-Homestead Examples

In all examples, inflation=2%

Example 1: Just Value +5%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$210,000	\$10,000 (+5%)
Assessed Value:			
Current Law	\$100,000	\$110,000	\$10,000 (+10%)
Proposal	\$100,000	\$105,000	\$5,000 (+5%)

Example 2: Just Value +1%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$202,000	\$2,000 (+1%)
Assessed Value:			
Current Law	\$100,000	\$110,000	\$10,000 (+10%)
Proposal	\$100,000	\$101,000	\$1,000 (+1%)

Example 3: Just Value 0%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$200,000	\$0 (0%)
Assessed Value:			
Current Law	\$100,000	\$110,000	\$10,000 (+10%)
Proposal	\$100,000	\$100,000	\$0 (0%)

Example 4: Just Value -5%

	Year 1	Year 2	Difference
Just Value	\$200,000	\$190,000	-\$10,000 (-5%)
Assessed Value:			
Current Law	\$100,000	\$110,000	\$10,000 (+10%)
Proposal	\$100,000	\$100,000	\$0 (0%)

House Joint Resolution

A joint resolution proposing amendments to Section 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to allow the legislature to additionally limit the growth in the assessed value of homestead and specified nonhomestead property by the growth rate in just value, and to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, and provide effective dates.

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

That the following amendments to Section 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

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

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30 used for conservation purposes shall be classified by general
 31 law and assessed solely on the basis of character or use.

32 (c) Pursuant to general law tangible personal property
 33 held for sale as stock in trade and livestock may be valued for
 34 taxation at a specified percentage of its value, may be
 35 classified for tax purposes, or may be exempted from taxation.

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

41 (1) Assessments subject to this subsection shall be
 42 changed annually on January 1st of each year; but those changes
 43 in assessments shall not exceed the lower of the following:

44 a. Three percent (3%) of the assessment for the prior
 45 year.

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

51 c. If the legislature so provides by general law, the
 52 percent change in the homestead property's just value if the
 53 change is greater than or equal to zero.

54 (2) The legislature may provide by general law that an
 55 assessment may not increase if the just value of the homestead
 56 property is less than the just value of the homestead property
 57 on the preceding January 1.

58 (3)-(2) No assessment shall exceed just value.

59 (4)~~(3)~~ After any change of ownership, as provided by
 60 general law, homestead property shall be assessed at just value
 61 as of January 1 of the following year, unless the provisions of
 62 paragraph (9)~~(8)~~ apply. Thereafter, the homestead shall be
 63 assessed as provided in this subsection.

64 (5)~~(4)~~ New homestead property shall be assessed at just
 65 value as of January 1st of the year following the establishment
 66 of the homestead, unless the provisions of paragraph (9)~~(8)~~
 67 apply. That assessment shall only change as provided in this
 68 subsection.

69 (6)~~(5)~~ Changes, additions, reductions, or improvements to
 70 homestead property shall be assessed as provided for by general
 71 law; provided, however, after the adjustment for any change,
 72 addition, reduction, or improvement, the property shall be
 73 assessed as provided in this subsection.

74 (7)~~(6)~~ In the event of a termination of homestead status,
 75 the property shall be assessed as provided by general law.

76 (8)~~(7)~~ The provisions of this amendment are severable. If
 77 any of the provisions of this amendment shall be held
 78 unconstitutional by any court of competent jurisdiction, the
 79 decision of such court shall not affect or impair any remaining
 80 provisions of this amendment.

81 (9)~~(8)~~a. A person who establishes a new homestead as of
 82 January 1, 2009, or January 1 of any subsequent year and who has
 83 received a homestead exemption pursuant to Section 6 of this
 84 Article as of January 1 of either of the two years immediately
 85 preceding the establishment of the new homestead is entitled to
 86 have the new homestead assessed at less than just value. If this
 87 revision is approved in January of 2008, a person who

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88 establishes a new homestead as of January 1, 2008, is entitled
89 to have the new homestead assessed at less than just value only
90 if that person received a homestead exemption on January 1,
91 2007. The assessed value of the newly established homestead
92 shall be determined as follows:

93 1. If the just value of the new homestead is greater than
94 or equal to the just value of the prior homestead as of January
95 1 of the year in which the prior homestead was abandoned, the
96 assessed value of the new homestead shall be the just value of
97 the new homestead minus an amount equal to the lesser of
98 \$500,000 or the difference between the just value and the
99 assessed value of the prior homestead as of January 1 of the
100 year in which the prior homestead was abandoned. Thereafter, the
101 homestead shall be assessed as provided in this subsection.

102 2. If the just value of the new homestead is less than the
103 just value of the prior homestead as of January 1 of the year in
104 which the prior homestead was abandoned, the assessed value of
105 the new homestead shall be equal to the just value of the new
106 homestead divided by the just value of the prior homestead and
107 multiplied by the assessed value of the prior homestead.

108 However, if the difference between the just value of the new
109 homestead and the assessed value of the new homestead calculated
110 pursuant to this sub-subparagraph is greater than \$500,000, the
111 assessed value of the new homestead shall be increased so that
112 the difference between the just value and the assessed value
113 equals \$500,000. Thereafter, the homestead shall be assessed as
114 provided in this subsection.

115 b. By general law and subject to conditions specified
116 therein, the legislature shall provide for application of this

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117 paragraph to property owned by more than one person.

118 (e) The legislature may, by general law, for assessment
 119 purposes and subject to the provisions of this subsection, allow
 120 counties and municipalities to authorize by ordinance that
 121 historic property may be assessed solely on the basis of
 122 character or use. Such character or use assessment shall apply
 123 only to the jurisdiction adopting the ordinance. The
 124 requirements for eligible properties must be specified by
 125 general law.

126 (f) A county may, in the manner prescribed by general law,
 127 provide for a reduction in the assessed value of homestead
 128 property to the extent of any increase in the assessed value of
 129 that property which results from the construction or
 130 reconstruction of the property for the purpose of providing
 131 living quarters for one or more natural or adoptive grandparents
 132 or parents of the owner of the property or of the owner's spouse
 133 if at least one of the grandparents or parents for whom the
 134 living quarters are provided is 62 years of age or older. Such a
 135 reduction may not exceed the lesser of the following:

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

138 (2) Twenty percent of the total assessed value of the
 139 property as improved.

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

145 (1) Assessments subject to this subsection shall be

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146 | changed annually on the date of assessment provided by law; but
 147 | those changes in assessments shall not exceed the lower of the
 148 | following:

149 | a. Ten percent (10%) of the assessment for the prior year.

150 | b. If the legislature so provides by general law, the
 151 | percent change in the property's just value if the change is
 152 | greater than or equal to zero.

153 | (2) The legislature may provide by general law that an
 154 | assessment may not increase if the just value of the property is
 155 | less than the just value of the property on the preceding date
 156 | of assessment provided by law.

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

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

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

168 | (h) For all levies other than school district levies,
 169 | assessments of real property that is not subject to the
 170 | assessment limitations set forth in subsections (a) through (d)
 171 | and (g) shall change only as provided in this subsection.

172 | (1) Assessments subject to this subsection shall be
 173 | changed annually on the date of assessment provided by law; but
 174 | those changes in assessments shall not exceed the lower of the

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175 following:

176 a. Ten percent (10%) of the assessment for the prior year.

177 b. If the legislature so provides by general law, the
 178 percent change in the property's just value if the change is
 179 greater than or equal to zero.

180 (2) The legislature may provide by general law that an
 181 assessment may not increase if the just value of the property is
 182 less than the just value of the property on the preceding date
 183 of assessment provided by law.

184 (3)-(2) No assessment shall exceed just value.

185 (4)-(3) The legislature must provide that such property
 186 shall be assessed at just value as of the next assessment date
 187 after a qualifying improvement, as defined by general law, is
 188 made to such property. Thereafter, such property shall be
 189 assessed as provided in this subsection.

190 (5)-(4) The legislature may provide that such property
 191 shall be assessed at just value as of the next assessment date
 192 after a change of ownership or control, as defined by general
 193 law, including any change of ownership of the legal entity that
 194 owns the property. Thereafter, such property shall be assessed
 195 as provided in this subsection.

196 (6)-(5) Changes, additions, reductions, or improvements to
 197 such property shall be assessed as provided for by general law.
 198 However, after the adjustment for any change, addition,
 199 reduction, or improvement, the property shall be assessed as
 200 provided in this subsection.

201 (i) The legislature, by general law and subject to
 202 conditions specified therein, may prohibit the consideration of
 203 the following in the determination of the assessed value of real

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204 property used for residential purposes:

205 (1) Any change or improvement made for the purpose of
 206 improving the property's resistance to wind damage.

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

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

210 a. Land used predominantly for commercial fishing
 211 purposes.

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

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

215 d. Water-dependent marine manufacturing facilities,
 216 commercial fishing facilities, and marine vessel construction
 217 and repair facilities and their support activities.

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

221 ARTICLE XII

222 SCHEDULE

223 SECTION 34. Property assessments.—This section and the
 224 amendments of Section 4 of Article VII addressing the limitation
 225 on the growth of assessed value for homestead and specified
 226 nonhomestead property, and homestead and specified nonhomestead
 227 property having a declining just value shall take effect January
 228 1, 2017.

230 BE IT FURTHER RESOLVED that the following statement be
 231 placed on the ballot:

232 CONSTITUTIONAL AMENDMENT

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233 ARTICLE VII, SECTION 4
 234 ARTICLE XII, SECTION 34
 235 PROPERTY ASSESSMENTS; GROWTH RATE LIMITATIONS; DECLINING
 236 PROPERTY VALUE.—Proposing to amend the State Constitution.
 237 Allowing the legislature to add a zero or positive percent
 238 change in the parcel’s just value to current growth rate
 239 limitations in a homestead and specified nonhomestead property’s
 240 assessed value. Allowing the legislature to prohibit homestead
 241 and specified nonhomestead property assessment increases, if a
 242 property’s just value is less than just value in the prior year.
 243 The amendment is effective on January 1, 2017.
 244

245 BE IT FURTHER RESOLVED that the following statement be
 246 placed on the ballot if a court declares the preceding statement
 247 defective and the decision of the court is not reversed:

248 CONSTITUTIONAL AMENDMENT

249 ARTICLE VII, SECTION 4

250 ARTICLE XII, SECTION 34

251 PROPERTY TAX LIMITATIONS; GROWTH IN ASSESSED VALUE;
 252 PROPERTY VALUE DECLINE.—

253 (1) This would amend Florida Constitution Article VII,
 254 Section 4 (Taxation; assessments). It also would add Article
 255 XII, Section 34, relating to the Schedule for the amendments.

256 (2) The law limits the growth in the assessed value of
 257 homestead properties to the lesser of 3 percent or the inflation
 258 rate. In certain circumstances, this could lead to the assessed
 259 value of the homestead property growing at a faster rate than
 260 the just value. Therefore, this amendment allows the legislature
 261 to add an additional limit to the rate of growth for assessed

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262 value of homestead properties. The growth rate would be limited
 263 to the lesser of 3 percent, the inflation rate, or the percent
 264 change in the homestead property's just value. This amendment,
 265 if approved by the voters, shall take effect January 1, 2017.

266 (3) The law limits the growth in the assessed value of
 267 nonhomestead properties to 10 percent of the assessment in the
 268 prior year. In certain circumstances, this could lead to the
 269 assessed value of the property growing at a faster rate than the
 270 just value. Therefore, this amendment allows the legislature to
 271 add an additional limit to the rate of growth for assessed value
 272 of specified nonhomestead properties. The growth rate would be
 273 limited to the lesser of 10 percent of the prior year assessment
 274 or the percent change in the specified nonhomestead property's
 275 just value. This amendment, if approved by the voters, shall
 276 take effect January 1, 2017.

277 (4) In certain circumstances, the law requires the
 278 assessed value of homestead and specified nonhomestead property
 279 to increase when the just value of the property decreases.
 280 Therefore, this amendment allows the legislature to provide that
 281 the assessment of homestead and specified nonhomestead property
 282 may not increase if the just value of that property is less than
 283 the just value of the property on the preceding date of
 284 assessment. This amendment, if approved by the voters, shall
 285 take effect January 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 16-02 Local Government Capital Recovery
SPONSOR(S): Finance & Tax Committee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Pewitt 	Langston 

SUMMARY ANALYSIS

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to local government capital recovery.

The bill provides a specified list of local government revenue sources, including abatement fines, administrative fines, property fines, and utility charges. These revenue sources are collectively referred to as "designated revenues" by the bill. The bill defines "procurement request" as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county's or municipality's procurement policy.

The bill provides that, after October 1, 2016, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The criteria are:

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least \$5,000,000; or
- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least \$1,000,000

The county or municipality must seek bids from licensed collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county's or municipality's delinquent designated revenues as of the date the invitation to bid is issued.

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

All counties and municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill may require some additional local government expenditures related to issuance of procurement requests. The bill might also improve certain local government revenue collections.

The bill takes effect July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb02.FTC

DATE: 10/30/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

County & Municipal Code Enforcement & Other Fees & Fines

Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or as otherwise authorized by the Legislature.¹ However, the Florida Constitution grants local governments broad home rule authority. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct county or municipal government, perform its functions and provide services, and exercise any power for county or municipal purposes, except as otherwise provided by law.² Non-charter county governments are granted powers of self-government pursuant to general or special law,³ and charter counties are granted all powers of self-government which do not conflict with general or special law.⁴ Local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. While local governments may have independent, home-rule authority to levy these fees or assessments, there are also Florida statutes that authorize specific types of fees.

Code enforcement fees are one example of a specific local fee authorized by state statute. Chapter 162, Florida Statutes, outlines a process by which local governments may appoint code enforcement boards to assess fines against property owners as a way to enforce county or municipal code or ordinance. Local governments are also authorized to hire code enforcement inspectors who may levy such fines.⁵ Any such fine, including any repair costs incurred to bring the property into compliance with code, may also constitute a lien against the owner of the property and any other real property owned by such owner.⁶ However the statute states that local governments are not prevented by statute from enforcing codes and ordinances by any other means.⁷

County and Municipally Owned Utilities

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."⁸ Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.⁹ With respect to public works projects, including water and sewer utility services,¹⁰ municipalities may extend and execute their corporate

¹ FLA. CONST. art VII, s. 1(a) and 9(a).

² FLA. CONST. art VIII, 2(b). *See also* s. 166.021, F.S.

³ FLA. CONST. art VIII, 1(f). *See also* chapter 125, F.S.

⁴ FLA. CONST. art VIII, 1(g).

⁵ Section 162.21, F.S.

⁶ Section 162.09, F.S.

⁷ Section. 162.21, F.S.

⁸ Art. VII, s. 10(d), Fla. Const. *See ss.* 361.10-361.18, F.S.

⁹ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).

¹⁰ S. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

powers outside of their corporate limits as “desirable or necessary for the promotion of the public health, safety and welfare” to accomplish the purposes of ch. 180, F.S.¹¹ Current law requires municipalities providing telecommunication services to abide by certain requirements.¹² Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).¹³ PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.¹⁴ PSC regulation of municipal natural gas utilities is limited to territorial issues.¹⁵ Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.¹⁶

Counties are authorized by statute to purchase, construct, maintain, and manage water supply and sewage systems.¹⁷ They are allowed to issue a variety of bonds to finance the construction of such systems,¹⁸ and may create water and sewer districts in unincorporated areas of the county.¹⁹ Additionally, counties may operate telecommunications services.²⁰

Uncollected Fees & Fines

Many fees and fines imposed by counties and municipalities are difficult to collect in a timely manner. However, because counties and municipalities have the authority to file liens against the property as part of code and ordinance enforcement activities, collection rates over the long run are very high as most properties are likely to be sold at some point in time. Consequently, at any given time, a county or municipality can have a large balance of uncollected fees and fines. In a survey of large cities in Florida performed by a private company in 2013, seven cities reported a total of \$421,885,684 in uncollected utility charges and code enforcement, abatement, administrative and other fines backed by property liens.

Collection Agencies

Counties and municipalities are authorized to contract with collection agencies to collect delinquent fees and fines, and typically do so on a contingency basis.²¹ When done on a contingency basis, fees paid to the collection agency may not exceed 40% of the amount originally owed to the county or municipality.

Florida law requires that businesses engaged in the practice of collecting debts from consumers be registered with the Office of Financial Regulation.²² As of June 30, 2015 there were 1,365 registered collection agencies in Florida.²³

¹¹ S. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. S. 180.19, F.S.

¹² See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

¹³ See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

¹⁴ Ss. 366.04(2), (5), and (6), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/17/2015).

¹⁵ S. 366.04(3), F.S. According to the PSC’s most recent “Facts and Figures of the Florida Utility Industry” (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/17/2015).

¹⁶ S. 367.022(2), F.S.

¹⁷ Section 153.03, F.S.

¹⁸ Chapter 153, F.S., multiple sections.

¹⁹ Part II., Chapter 153.F.S.

²⁰ Section 125.421, F.S.

²¹ Section 938.35, F.S.

²² Section 559.555, F.S.

²³ Telephone conversation with OFR (October 29, 2015).

Practices of collection agencies are governed by the federal Fair Debt Collection Practices Act²⁴ and the Florida Consumer Collection Practices Act.²⁵ Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney’s fees and costs.

Annual Financial Audit Report

Section 218.32, F.S., requires that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, F.S., submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year in a format prescribed by DFS.²⁶ The AFR must include any component units, as defined by generally accepted accounting principles, and each component unit must provide the local governmental entity, within a reasonable time period, financial information necessary to comply with the AFR reporting requirements. Some entities, including municipalities, are required to provide a financial audit report along with its AFR, and must do so within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year.²⁷ AFRs provide local government revenue and expenditure information in more detail than is included in audit reports and is useful for detailed financial analysis.

Proposed Changes

The bill creates sections 125.575 and 166.30, Florida Statutes, relating to county and municipal capital recovery, respectively. The bill provides a specified list of local government revenue sources, including:

- Abatement fines, which are amounts billed to an owner of real property by a county or municipality to recover funds expended by the county or municipality to bring the property into compliance with county or municipal ordinance by taking some action at the property;
- Administrative fines, which are amounts other than abatement or property fines billed to an individual for the violation of a county or municipal ordinance or code unrelated to real property;
- Property fines, which are amounts other than abatement fines which are billed to a property owner due to the property being out of compliance with an ordinance or code; and
- Utility charges, which are amounts billed to a customer, other than a governmental entity, by a government-owned utility for providing utility service.

These revenue sources are collectively referred to as “designated revenues” by the bill. The bill defines “procurement request” as an invitation to bid, invitation to negotiate, or request for proposal issued pursuant to a county’s or municipality’s procurement policy.

The bill provides that, after October 1, 2015, any county or municipality which meets at least one the following criteria must issue a procurement request within 30 days of first meeting the criterion. The county or municipality must seek bids from licensed collection agencies offering a one-time up-front cash payment to the county or municipality in exchange for the right to collect all of the county’s or municipality’s delinquent designated revenues as of the date the procurement request is issued. The criteria are:

²⁴ 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

²⁵ Part VI of Chapter 559, F.S.

²⁶ Pursuant to s. 218.32(1)(c), F.S., regional planning councils; local government finance commissions, boards, or councils; and municipal power corporations created as a separate legal or administrative entity by interlocal agreement under s. 163.01(7), F.S., are also required to submit an AFR and audit report to DFS.

²⁷ Sections 218.32(1)(d)-(e), F.S.

- The sum of the county's or municipality's designated revenues which are more than 90 days delinquent is at least \$10,000,000;
- The sum of the county's or municipality's designated revenues which are more than 180 days delinquent is at least \$5,000,000; or
- The sum of the county's or municipality's designated revenues which are more than 270 days delinquent is at least \$1,000,000

If the county's or municipality's delinquent designated revenues make up less than 20% of its total designated revenues billed during the previous 12 months, it is not required to issue a procurement request. If it does issue a procurement request, it must evaluate the amount of its delinquent designated revenues, exclusive of any amount turned over to a collection agency that submitted a bid in response to the procurement request, 12 months after the procurement request was issued. If, at that time, it continues to meet any of the three criteria, it must issue an additional procurement request.

The county or municipality is not required to enter into a contractual relationship with any company responding to the procurement request, and may continue to collect delinquent designated revenues by any method allowed by law. However if the governing board of the county or municipality has not entered into negotiations to contract with a collection agency that submitted a response to the procurement request within 60 days of receipt of all responses, the mayor of a municipality, county executive of a charter county, or Clerk of Courts of a non-charter county may enter into negotiations with a collection agency and may execute a contract with them on the county's or municipality's behalf.

Any county or municipality issuing a procurement request pursuant to this section is required to file a copy of all responses to the procurement request with the Department of Financial Services, which must maintain a copy of all such bids for a period of at least 5 years.

All municipalities must include, as part of the management letter submitted with the annual financial audit report, a discussion of the county's or municipality's delinquent designated revenues and the efforts undertaken by the county or municipality to collect these revenues.

The bill takes effect July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Creates section 125.575, F.S., specifying the requirements for county capital recovery.

Section 2: Creates section 166.30, F.S., specifying the requirements for municipal capital recovery.

Section 3: Amends section 218.39, F.S. to require a discussion of county or municipal capital recovery as part of the management letter accompanying the annual financial auditing report.

Section 4: Provides an effective date.

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:

See FISCAL COMMENTS below.

2. Expenditures:

The bill may, in certain circumstances, require an expenditure of funds by a county or municipality to issue a procurement request.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may result in improved revenue collections if it encourages additional local government revenue collection efforts.

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 the bill requires counties and municipalities, in some circumstances, to issue a procurement request, which may require the expenditure of funds; however, an exemption may apply, as the expenditure of funds to issue an invitation to bid is most likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to local government capital recovery;
 3 creating ss. 125.575 and 166.30, F.S.; providing
 4 definitions; requiring counties and municipalities
 5 that meet certain thresholds for specified delinquent
 6 revenues to issue a procurement request to collect
 7 such revenues; requiring procurement requests to be
 8 sent to consumer collection agencies; providing
 9 requirements for the content of the procurement
 10 requests; providing that counties and municipalities
 11 issuing procurement requests are not required to enter
 12 into a contract; allowing a county executive, Clerk of
 13 Courts, or mayor to accept a bid under certain
 14 circumstances; providing that delinquent revenues are
 15 excluded from the threshold calculations under certain
 16 circumstances; requiring that copies of all bids
 17 received be filed with the Department of Financial
 18 Services; amending s. 218.39, F.S.; requiring that a
 19 discussion of capital recovery efforts be included in
 20 the management letter accompanying a county's or
 21 municipality's annual financial audit report;
 22 providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 125.575, Florida Statutes, is created

27 to read:

28 125.575 County capital recovery.--

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

30 (a) "Abatement fine" means an amount billed to an owner of
 31 real property by a county after the county brings such real
 32 property or a portion thereof into compliance with a county
 33 ordinance or code by removing, repairing, rehabilitating,
 34 demolishing, improving, remediating, storing, transporting, or
 35 disposing of any portion of the real property or any tangible
 36 personal property located thereon, regardless of whether a lien
 37 was attached to the property related to such fine.

38 (b) "Administrative fine" means an amount billed to an
 39 individual for a violation of a county ordinance or code
 40 unrelated to real property.

41 (c) "Delinquent" means unpaid after the due date listed on
 42 the original billing of an abatement fine, administrative fine,
 43 property fine, or utility charge, regardless of whether the
 44 county has contracted with a collection agency pursuant to s.
 45 938.35 for the collection of the unpaid fines or charges.

46 (d) "Designated revenues" means abatement fines,
 47 administrative fines, property fines, and utility charges.

48 (e) "Procurement request" means an invitation to bid, an
 49 invitation to negotiate, or a request for proposals issued by a
 50 county pursuant to its procurement policies.

51 (f) "Property fine" means an amount other than an
 52 abatement fine billed to a property owner due to the property's

53 being out of compliance with a county ordinance or code,
 54 regardless of whether a lien was attached to the property
 55 related to such fine.

56 (g) "Utility charge" means an amount billed to a customer,
 57 other than a government entity as defined in s. 768.295, by a
 58 county-owned utility for providing utility service.

59 (2) Beginning October 1, 2016, a county shall issue a
 60 procurement request meeting the requirements of subsection (4)
 61 if the county has designated revenues totaling at least:

62 (a) Ten million dollars which are more than 90 days
 63 delinquent;

64 (b) Five million dollars which are more than 180 days
 65 delinquent; or

66 (c) One million dollars which are more than 270 days
 67 delinquent.

68 (3) A county that meets at least one of the criteria in
 69 paragraphs (2) (a) - (c) one year after issuing a procurement
 70 request pursuant to this section must issue one additional
 71 procurement request meeting the requirements of subsection (4).

72 (4) A procurement request issued pursuant to this section
 73 must be issued no later than 30 days after the criteria of
 74 subsection (2) or subsection (3) are met and must seek bids from
 75 consumer collection agencies registered pursuant to s. 559.553.
 76 The procurement request shall require an up-front cash payment
 77 and may allow a portion of the bid to be based on contingency
 78 fees in exchange for the right of the consumer collection agency

79 to collect the county's delinquent designated revenues that were
80 delinquent on the date that the county issued the procurement
81 request. The procurement request must state that bids based
82 solely on contingency fees with no up-front cash payment will
83 not be accepted.

84 (5) Subsections (2) and (3) do not apply to a county whose
85 delinquent designated revenues are less than 20 percent of the
86 total designated revenues billed by the county in the previous
87 12 months.

88 (6) A county is not required to enter into a contract for
89 services with any consumer collection agency that responds to
90 the procurement request. However, if the governing body of the
91 county has not begun negotiations to enter into a contract for
92 services with a consumer collection agency that responded to the
93 procurement request within 60 days of the receipt of all bids
94 submitted pursuant to the procurement request, negotiations and
95 a contract may be entered into by the county executive in a
96 county operating under a county charter or the Clerk of Courts
97 in a county which is not operating under a county charter.

98 (7) Any delinquent designated revenues that a consumer
99 collection agency has contracted to collect in response to a
100 procurement request issued pursuant to this section shall be
101 excluded from the calculation made by the county when
102 determining whether any of the criteria in paragraphs (2) (a) - (c)
103 are met.

104 (8) The county shall forward a copy of all bids that it

105 has received in response to any procurement request to the
 106 Department of Financial Services. The Department of Financial
 107 Services shall keep all of the bids on file for at least 5 years

108 Section 2. Section 166.30, Florida Statutes, is created to
 109 read:

110 166.30 Municipal capital recovery.-

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

112 (a) "Abatement fine" means an amount billed to an owner of
 113 real property by a municipality after the municipality brings
 114 such real property or a portion thereof into compliance with a
 115 municipal ordinance or code by removing, repairing,
 116 rehabilitating, demolishing, improving, remediating, storing,
 117 transporting, or disposing of any portion of the real property
 118 or any tangible personal property located thereon, regardless of
 119 whether a lien was attached to the property related to such
 120 fine.

121 (b) "Administrative fine" means an amount billed to an
 122 individual for a violation of a municipal ordinance or code
 123 unrelated to real property.

124 (c) "Delinquent" means unpaid after the due date listed on
 125 the original billing of an abatement fine, administrative fine,
 126 property fine, or utility charge, regardless of whether the
 127 municipality has contracted with a collection agency pursuant to
 128 s. 938.35 for the collection of the unpaid fines or charges.

129 (d) "Designated revenues" means abatement fines,
 130 administrative fines, property fines, and utility charges.

131 (e) "Procurement request" means an invitation to bid, an
 132 invitation to negotiate, or a request for proposals issued by a
 133 municipality pursuant to its procurement policies.

134 (f) "Property fine" means an amount other than an
 135 abatement fine billed to a property owner due to the property's
 136 being out of compliance with a municipal ordinance or code,
 137 regardless of whether a lien was attached to the property
 138 related to such fine.

139 (g) "Utility charge" means an amount billed to a customer,
 140 other than a government entity as defined in s. 768.295, by a
 141 municipally-owned utility for providing utility service.

142 (2) Beginning October 1, 2016, a municipality shall issue
 143 a procurement request meeting the requirements of subsection (4)
 144 if the municipality has designated revenues totaling at least:

145 (a) Ten million dollars which are more than 90 days
 146 delinquent;

147 (b) Five million dollars which are more than 180 days
 148 delinquent; or

149 (c) One million dollars which are more than 270 days
 150 delinquent.

151 (3) A municipality that meets at least one of the criteria
 152 in paragraphs (2)(a)-(c) one year after issuing a procurement
 153 request pursuant to this section must issue one additional
 154 procurement request meeting the requirements of subsection (4).

155 (4) A procurement request issued pursuant to this section
 156 must be issued no later than 30 days after the criteria of

157 subsection (2) or subsection (3) are met and must seek bids from
 158 consumer collection agencies registered pursuant to s. 559.553.
 159 The procurement request shall require an up-front cash payment
 160 and may allow a portion of the bid to be based on contingency
 161 fees in exchange for the right of the consumer collection agency
 162 to collect the municipality's delinquent designated revenues
 163 that were delinquent on the date that the municipality issued
 164 the procurement request. The procurement request must state that
 165 bids based solely on contingency fees with no up-front cash
 166 payment will not be accepted.

167 (5) Subsections (2) and (3) do not apply to a municipality
 168 whose delinquent designated revenues are less than 20 percent of
 169 the total designated revenues billed by the municipality in the
 170 previous 12 months.

171 (6) A municipality is not required to enter into a
 172 contract for services with any consumer collection agency that
 173 responds to the procurement request. However, if the governing
 174 body of the municipality has not begun negotiations to enter
 175 into a contract for services with a consumer collection agency
 176 that responded to the procurement request within 60 days of the
 177 receipt of all bids submitted pursuant to the procurement
 178 request, negotiations and a contract may be entered into by the
 179 mayor of the municipality.

180 (7) Any delinquent designated revenues that a consumer
 181 collection agency has contracted to collect in response to a
 182 procurement request issued pursuant to this section shall be

183 excluded from the calculation made by the municipality when
 184 determining whether any of the criteria in paragraphs (2)(a)-(c)
 185 are met.

186 (8) The municipality shall forward a copy of all bids that
 187 it has received in response to any procurement request to the
 188 Department of Financial Services. The Department of Financial
 189 Services shall keep all of the bids on file for at least 5
 190 years.

191 Section 3. Subsection (4) of section 218.39, Florida
 192 Statutes, is amended to read:

193 218.39 Annual financial audit reports.—

194 (4) A management letter shall be prepared and included as
 195 a part of each financial audit report. For county and municipal
 196 financial audit reports, the letter must include a discussion of
 197 the current balance of the county's or municipality's delinquent
 198 designated revenues as defined in s. 166.30 and the efforts that
 199 the county or municipality has undertaken to collect such
 200 revenues.

201 Section 4. This act shall take effect July 1, 2016.

**Florida Sales Tax
by Major Business Type Category**

	% of Total Coll. <u>FY 2014-15</u>	Growth Since FY 2009-10		
		<u>Amount (mil \$)</u>	<u>% Change</u>	<u>% of Total</u>
Consumer Nondurables	30%	\$ 1,387	25%	23%
Tourism-Related	22%	\$ 1,405	39%	24%
Motor Vehicles	17%	\$ 1,328	51%	22%
Other Durables	7%	\$ 416	38%	7%
Construction-Related	6%	\$ 446	51%	8%
<u>Business Spending</u>	18%	\$ 929	29%	16%
Total		\$ 5,911	35%	

Motor Vehicles
Automobile Repair & Services
Automotive Accessories & Parts
Automotive Dealers (Sale & Lease), Tag Agencies & Tax Collectors
Gasoline Service Stations
Other Durables
Aircraft Dealers
Boat Dealers
Home Furniture, Furnishings & Equipment
Household Appliances & Accessories
Paint, Wallpaper & Hardware Dealers
Radio, Television, Consumer Electronics, Computers, Music Stores
Consumer Nondurables
Apparel & Accessory Stores
Bakeries
Barber Shops, Beauty Shops & Personal Appearance Services
Book Stores
Bottlers
Camera & Photographic Supply Stores
Candy, Nut, Confectionary & Dairy Product Stores
Commercial Fishing
Communication, Telephone, Telegraph, Radio & Television Stations
Eating & Drinking Places (not restaurants)
Flea Market Management & Space Providers
Florists
Food & Beverage Stores
Fuel Dealers, LP Gas Dealers
Funeral Directors, Crematories & Monuments
General Miscellaneous Merchandise Stores
Graphic Arts, Printing, Publishing, Engraving, Binding, Blueprinting
Horse, Cattle & Pet Dealers
Importing & Exporting
Itinerant Vendors, Peddlers, Direct Selling Establishments
Laundry, Garment, Linen & Other Cleaning Services
Meat Markets, Poultry
Nurseries, Landscapes, Tree Experts
Other Professional Services
Pawn Shops
Repair of Tangible Personal Property
Schools, Colleges & Educational Services
Scrap Metal, Junk Yards, Salvaged Material

Seafood Dealers
Sewing, Needlework & Piece Goods Stores
Shoe Repair Shops, Shoe-shine Parlors & Hat Cleaning Shops
Shoe Stores
Social, Fraternal, Commercial Clubs & Associations (All Dues)
Storage & Warehousing
Tobacco Stores & Stands
Used Merchandise Stores, Second-Hand Stores, Antique Shops
Utilities, Electric, Gas, Water, Sewer
Vegetable & Fruit Markets, Fruit Juice Stands
Vending Machine Operators
Veterinary Services
Miscellaneous
Tourism-Related
Admissions, Amusement & Recreation Services
Drinking Places (Alcoholic beverages served on premises)
Exempt Facilities
Gifts, Cards, Novelty, Hobby, Crafts & Toy Stores
Holiday Season Vendors
Hotel/Motel Accommodations, Rooming Houses, Camps & Other Lodging
Newsstands & News Dealers
Privately Owned Parking Lots, Boat Docks & Aircraft Hangars
Rental of Tangible Personal Property
Restaurants, Lunchrooms, Catering Services
Construction-Related
Building Contractors
Decorating, Painting, Papering, Drapery Installation
Electrical, Plumbing, Well Drilling, Pipes
Fabrication & Sales of Cabinets, Windows, Doors, Awnings, Septic Tanks
Heating & Air Conditioning
Lumber and Other Building Materials Dealers
Mining, Drilling, Top Soil, Clay, Sand, Fill Dirt
Roofing & Sheet Metal
Business Spending
Advertising
Farm Implements & Equipment Suppliers
Feed & Seed Stores, Retail Nurseries
Industrial Machinery
Insurance, Banking, Savings & Loans, Research Information Services
Lease or Rental of Commercial Real Property
Machine Shops, Foundries, Iron Work
Manufacturing
Medical, Dental, Surgical, Optical & Related Professional Services
Packaging Materials, Paper, Box, Bag Dealers
Sanitary & Industrial Supplies
Store & Office Equipment, Office Supplies
Taxable Services (per Chapter 212, F.S.)
Transportation, Railroads, Airlines, Bus, Trucking Lines
Wholesale Dealers
Other-Not Classified

Florida Department of
Business
Professional
Regulation

License efficiently. Regulate fairly.

Andrew R. Fier
Deputy General Counsel



Tobacco Tax Issues

House Finance and Tax Committee
November 5, 2015

Discussion Topics

- I. Other Tobacco Products (OTP)
- II. Current Issues in OTP Excise Tax
 - A. Revenue Issues Caused by Judicial Uncertainty
 - B. Tax Disadvantages Between American and Overseas OTP
- III. Opportunities for Legislative Action

Other Tobacco Products

210.25(11)

“Tobacco products” means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” **does not include cigarettes, as defined by s. 210.01(1), or cigars.**

Other Tobacco Products

210.25(11)

Include:

- Pipe Tobacco
- Chewing Tobacco
- Hookah Tobacco
- Dipping Tobacco
- Similar Products

May Include:

- Blunt Wraps

Other Tobacco Products Revenue

- The state collects approximately \$105 million annually from the sale of Other Tobacco Products.
- The state has received numerous refund requests following recent appellate decision.
- Broad interpretation could reduce annual OTP revenue by approximately 50%.

Wholesale Sales Price

210.25(13)

“Wholesale sales price” means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.

1. What costs make up the tobacco product?

Source of Uncertainty Litigant's Interpretation

“WHOLESALE SALES PRICE” means the **established price** for which a manufacturer **sells a tobacco product** to a distributor, exclusive of any diminution by volume or other discounts.





Proposal 1

Wholesale Sales Price - 210.25(13)

Wholesale Sales Price Would Include:

- 1) Charges by the seller for cost of materials, labor, and service;
- 2) Charges for transportation and delivery;
- 3) Any other separately listed charges, including FET;
- 4) Any discounts provided to a distributor or affiliate.

Wholesale Sales Price

210.25(13)

“Wholesale sales price” means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.

1. What costs make up the tobacco product?
2. When is the tobacco product assessed?

WHOLESALE SALES PRICE ("WSP") and FEDERAL EXCISE TAX ("FET")
CURRENT SCENARIOS

AMERICAN MANUFACTURER

Creates OTP valued at \$5.00

Pays FET at \$2.83 per pound

Sells at WSP: Mfr.'s full price of \$7.83

Includes FET



FLORIDA DISTRIBUTOR

Pays FL Tax of \$6.65

Sells for WSP + FL Tax



RETAILER PRICE: \$14.48

OVERSEAS MANUFACTURER

Creates OTP valued at \$5.00

Does not pay FET

Sells at WSP: Mfr.'s full price of \$5.00

Does not include FET



IMPORTING DISTRIBUTOR

Pays FET at \$2.83 per pound

Sells OTP for \$7.83



FLORIDA DISTRIBUTOR (Micjo)

Pays FL Tax of \$4.25

Sells for WSP + FET + FL Tax



RETAILER PRICE: \$12.08



Wholesale Sales Price



Federal Excise Tax



Florida Excise and Surcharge

TAX PAID BY FLORIDA DISTRIBUTOR

Tax Assessed on \$7.83 WSP

\$1.95 Florida Tax (25%)

\$4.70 Florida Surcharge (60%)

Tax Assessed on \$5.00 WSP

\$1.25 Florida Tax (25%)

\$3.00 Florida Surcharge (60%)

Proposal 2

Wholesale Sales Price - 210.25(13)

Suggested Language

- The full price paid by the Florida Distributor to acquire the other tobacco products.

Current Definition

- The established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.

WHOLESALE SALES PRICE ("WSP") and FEDERAL EXCISE TAX ("FET")
SUGGESTED LEGISLATION

AMERICAN MANUFACTURER

Creates OTP valued at \$5.00

Pays FET at \$2.83 per pound

Sells OTP for \$7.83



FLORIDA DISTRIBUTOR

Buys at WSP: Distr.'s full cost of \$7.83

Includes FET

Pays FL Tax of \$6.65

Sells for WSP + FL Tax



RETAILER PRICE: \$14.48

OVERSEAS MANUFACTURER

Creates OTP valued at \$5.00

Does not pay FET

Sells OTP for \$5.00



IMPORTING DISTRIBUTOR

Pays FET at \$2.83 per pound

Sells OTP for 7.83



FLORIDA DISTRIBUTOR (*Micjo*)

Buys at WSP: Distr.'s full cost of \$7.83

Includes FET

Pays FL Tax of \$6.65

Sells for WSP + FL Tax



RETAILER PRICE: \$14.48



Wholesale Sales Price



Federal Excise Tax



Florida Excise and Surcharge

TAX PAID BY FLORIDA DISTRIBUTOR

Tax Assessed on \$7.83 WSP

\$1.95 Florida Tax (25%)

\$4.70 Florida Surcharge (60%)



Proposal 3

Tobacco Products - 210.25(11)

Tobacco Products Would Include:

- Products, including wraps, made in whole or in part from tobacco leaves for use in chewing, smoking, or sniffing.

Impact

- CAPS UNCERTAINTY in State Revenue
- PROVIDES CERTAINTY to Industry and State
- INCREASES FAIRNESS of OTP Regulations
- SIMPLIFIES Compliance and Administration
- AFFIRMS Longstanding Interpretation and Administration of § 210.25, F.S.



Questions?



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Renewable Energy
Tax Credits

Florida's Office of Energy

Florida Renewable Energy Tax Incentives

Kelley Smith Burk
Director

Florida House of Representatives
Finance & Tax Committee

November 5, 2015



Florida Renewable Energy Tax Incentives Overview

- The 2012 Florida Legislature reintroduced the Renewable Energy Tax Incentives as a component of Florida's energy policy.
- The program consists of three possible tax incentives and represents a total of \$89 million in potential tax credits or sales tax refunds during the life of the program.
- The intended goals of the program are to increase renewable energy production within the state and create new jobs for Floridians.



Florida Renewable Energy Production Tax Credit

- Authorized by Section 220.193, Florida Statutes.
- Provides an annual corporate tax credit equal to \$0.01/kWh of electricity produced from renewable energy including:
 - hydrogen;
 - biomass;
 - solar energy;
 - geothermal energy;
 - wind energy;
 - ocean energy;
 - waste heat; and
 - hydroelectric power.
- Eligible production period is January 1, 2013, through June 30, 2016.



Florida Renewable Energy Production Tax Credit

Utilization of the Florida Renewable Energy Production Tax Credits

Fiscal Year	Production Year	Appropriation	Unused Credits
FY2012-13	1/1/13 - 6/60/13	\$10 million	\$0
FY2013-14	1/1/13 - 12/31/13	\$10 million	\$0
FY2014-15	1/1/14 - 12/31/14	\$10 million	\$0
FY2015-16	1/1/15 - 12/31/15	\$10 million	\$10 million
FY2016-17	1/1/16 - 6/60/16	\$10 million	\$10 million



Florida Renewable Energy Production Tax Credit

- During the 2013 production year, a total program investment of \$11.2 million produced:
 - An estimated economic impact of \$183.1 million.
 - Supported or created 587 jobs.
- During the 2014 production year, a total program investment of \$13.7 million produced:
 - An estimated economic impact of \$230.5 million.
 - Supported or created 728 jobs.
- Every dollar invested in this program results in:
 - An estimated \$16.74 of economic activity throughout the state.
 - An estimated \$1.53 returns to state and local government as tax revenues.
- Program outcome: this was a very successful program, and FDACS recommends continuing this program.



Florida Renewable Energy Technologies Investment Tax Credit

- Authorized by Section 220.192, Florida Statutes.
- Provides an annual corporate tax credit equal to 75 percent of all costs in connection with an investment in the production, storage and distribution of:
 - biodiesel (B10-B100);
 - ethanol (E10-E100); and
 - other renewable.
- Eligible costs must be incurred between July 1, 2012, and June 30, 2016.
- \$1 million per state fiscal year for each taxpayer.
- Limit of \$10 million per state fiscal year.



Florida Renewable Energy Technologies Investment Tax Credit

Utilization of the Florida Renewable Energy Technologies Investment Tax Credit

Fiscal Year	Appropriation	Total Credits Approved	Unused Appropriation
FY2012-13	\$10 million	\$6,878,263.96	\$3,121,736.04
FY2013-14	\$10 million	\$10 million	\$0
FY2014-15	\$10 million	\$10 million	\$0
FY2015-16	\$10 million	\$0	N/A

The application period for FY2015-16 opens on July 1, 2016.



Florida Renewable Energy Technologies Investment Tax Credit

- During FY 2012-13, a total program investment of \$6.8 million produced:
 - An estimated economic impact of \$17.2 million.
 - Supported or created 119 jobs.
- During FY 2013-14, a total program investment of \$10 million produced:
 - An estimated economic impact of \$23.6 million.
 - Supported or created 140 jobs.
- Every dollar invested in the Renewable Energy Technologies Investment Tax Credit results in:
 - An estimated \$2.37 of economic activity throughout the state.
 - An estimated 5 cents of every dollar returns to state and local government as tax revenues.
- Program outcome: this program has increased the infrastructure for the production of renewable transportation fuel.



Florida Renewable Energy Technologies Sales Tax Refund

- Authorized by Section 212.08(7)(hhh), Florida Statutes.
- Provides a refund of previously paid Florida sales tax on materials used in the distribution, transportation and storage of:
 - biodiesel (B10-B100);
 - ethanol (E10-E100); and
 - other renewable fuels.
- An eligible item is subject to a one-time refund.
- Must be purchased between July 1, 2012, and June 30, 2016.
- Limited to \$1 million each state fiscal year for all taxpayer applicants.



Florida Renewable Energy Technologies Sales Tax Refund

Utilization of the Florida Renewable Energy Technologies Sales Tax Refund

Fiscal Year	Appropriation	Total Refunds Approved	Unused Appropriation
FY2012-13	\$1 million	\$0	\$1 million
FY2013-14	\$1 million	\$261,686.16	\$738,191.84
FY2014-15	\$1 million	\$27,740.66	\$972,259.34
FY2015-16	\$1 million	\$411,350.34	\$588,649.66

The application period for FY2015-16 is currently open and will close on June 30, 2016.



Florida Renewable Energy Technologies Sales Tax Refund

- During FY 2013-14, an investment of \$261,686 in sales tax refunds resulted in:
 - Total purchases of new equipment above \$4.3 million;
 - Total estimated economic impact of more than \$7.7 million; and
 - Supported or created 42 jobs.
- Every dollar invested in the Renewable Energy Technologies Sales Tax Refund:
 - Contributes an estimated \$29.64 to the Florida's economy.
 - Returns 66 cents to state and local government coffers in the form of taxes.
- Program outcome: this program was underutilized.



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