

# Florida's Property Tax Study Interim Report

*(As required by Chapter 2006-311, Laws of Florida)*

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Legislative Office of Economic and Demographic Research  
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### Appendices

*Appendix A: Florida’s Property Tax Structure: An Analysis of Save Our Homes and Truth in Millage Pursuant to Chapter 2006-311, L.O.F.; Florida Department of Revenue*

*Appendix B: Legal Analysis of Proposed Alternatives to Florida’s Homestead Property Tax Limitations: Federal Constitutional and Related Issues; Walter Hellerstein, W. Scott Wright, and Charles C. Kearns of Sutherland Asbill & Brennan LLP*

*Appendix C: Annotated Survey Results [C1 – County Property Appraisers; C2 – County Tax Collectors; C3 – School District Superintendents; C4 – Local Government Officials]*

## *Executive Summary*

During the 2006 legislative session, no less than 14 proposed constitutional amendments dealing with property taxes were filed for consideration by the Florida Legislature. Many of these took quite different approaches, and consensus on a united direction was lacking. In the end, the legislature passed one limited proposal and provided for an in-depth study of the property tax system, with emphasis on the taxation of homestead property. The legislative response – Chapter 2006-311, Laws of Florida – required the Office of Economic and Demographic Research (EDR) to prepare a report containing findings and policy options relating to Florida’s property tax structure. The legislation also included a \$500,000 appropriation to EDR to conduct the study, and \$300,000 to the Department of Revenue (DOR) to analyze the impact of current homestead exemptions and assessment differentials on different types of property.

This document fulfills the requirement to produce an interim progress report prior to the beginning of the 2007 Session. The primary focus is on findings related to the Department of Revenue’s submission, background material sufficient to develop those findings, and a legal analysis of the various proposals that have been made to revise the property tax system. While much of the ensuing material is statutorily centered on the current Save Our Homes assessment growth limitation, a better understanding of its operation should set the stage for future modifications. In this regard, the key findings are presented below and discussed throughout the remainder of the report. Specific policy options which address the findings – as well as a discussion of their strengths and weaknesses – will be included in the final report due in September 2007.

### *Findings from EDR Research*

1. Exemptions shrink the property tax base and, in Florida, reduce the total capacity to raise revenues. They also shift the property tax burden (and cost for public services) from the exempt entity to nonexempt entities.
2. Studies have shown that tax breaks for residential property (such as Save Our Homes) will increase housing prices for the benefited properties. The converse is also true – higher property taxes suppress housing prices, all else being equal.
3. Several studies have found that commercial and industrial investment tends to be more responsive to tax rates than residential investment. This means that the increasing shift of the property tax burden to businesses may cause them to reduce or eliminate commercial investment – in some instances, leading them to investments in other states where the property taxes are less burdensome.
4. The interplay between falling statewide millage rates and the Save Our Homes limitation being less than the growth in the consumer price index for four out of the twelve years since its implementation has had the practical effect of producing

*real* tax bills that are lower today than they were in 1994 for those homesteads that have been protected since then, assuming adjustments for inflation.

### ***Findings Based on DOR Data***

1. As intended, the Save Our Homes Amendment has suppressed the taxable value of homestead properties in Florida. In doing so, it has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property.
2. The impact of Save Our Homes varies considerably by county; however, the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida. Because larger differentials lead to greater tax shifting, non-homestead residential and non-residential property owners in those counties have increased tax burdens.
3. A direct outcome of the Save Our Homes tax preference is that dissimilar tax burdens have been placed on homeowners in similar circumstances, based solely on length of ownership. This is a horizontal inequity.
4. The dissimilar nature of the tax burden caused by Save Our Homes has an impact on the overall affordability of housing for individual buyers, but more research needs to be conducted prior to determining whether the increased burden is cost prohibitive to homebuyers and renters.
5. The Save Our Homes protection has made it possible for homeowners on the margin to remain in their homes longer than they otherwise could have, but more research needs to be conducted on existing homeowners' ability-to-pay prior to determining the magnitude of this effect.
6. The presence of the Save Our Homes assessment growth limitation has had a detectable impact on the distribution of the state-funded portion of the FEFP in Florida. While the total funding per student is not affected, the mix of local and state funding is altered between school districts. This in turn affects the local property tax burden. Approximately \$135 million or 1.8% of the total required local effort has been impacted.
7. To the extent that the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida (as previously found), these areas have disproportionately benefited from the interaction of the FEFP with the Save Our Homes protection, while the other areas have experienced higher school property taxes than they otherwise would have.

8. Adoption of portability will further reduce tax rolls below the levels they would otherwise have attained.
9. Full portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$13.6 billion in the first year. This reduction in taxable value would grow to \$65.0 billion in the fifth year. At the 2005 average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues ranging from \$267 million in 2008 to \$1.3 billion in 2012, if millage rates were held constant.
10. In operation, portability is merely an extension of Save Our Homes. Because the differential can be transferred from one home to another, portability has the practical effect of intensifying all of the previous findings related to Save Our Homes. Both the magnitude and duration of the effects are increased.
11. According to the Department of Revenue, for the 33 year period from 1974 to 2006, Florida taxing districts as a whole levied below the rolled-back rate in three years, and those were related to identifiable external events. For the entire period, local taxing jurisdictions levied millages that were an average of 6.1% above the rolled-back rate. For public school levies, this average was 5.8%, and for all other taxing jurisdictions, 6.4%. To the extent that homesteaded properties were protected by Save Our Homes, the tax increases fell disproportionately on non-homesteaded properties.
12. While the dollar value of the property tax burden may have increased for many Floridians, this does not translate directly into statements regarding individual affordability and ability-to-pay. Homesteaders are shielded from the full impact of tax increases at the expense of non-homesteaders.
13. The impact of Save Our Homes on net property tax burdens is difficult to assess without additional study. Personal wealth as reflected in higher just values is not fully captured by measures of personal income, and tax exportation to other states and the federal government is rarely taken into account.
14. Because Save Our Homes has shielded homesteaded property owners from the full effect of tax increases, the visibility and awareness of the taxes being paid has been reduced, potentially leading to an over-demand of services.

### ***Findings Based on Hellerstein Legal Analysis***

1. While most of the proposed alternatives to the current property tax structure in Florida present no significant federal constitutional issues, portability may provide opportunities for legal challenge based on the Commerce Clause, the “Interstate” Privileges and Immunities Clause, and the Right to Travel.

2. The extension of assessment limitations to non-homesteaded properties may generate Commerce Clause objections, but their strength is currently untested.
3. If any of the proposed alternatives is adopted and later held to be unconstitutional, the discrimination or burden would have to be eliminated on a prospective basis and remedied through meaningful backward-looking relief on a retrospective basis. Meaningful backward-looking relief for a discriminatory tax may entail either a refund or any other remedy that cures the discrimination, *e.g.*, taxing the previously favored class on a retroactive basis.

### ***Findings Based on EDR Surveys***

1. Both local government officials and the county property appraisers feel that the property tax burden is not shared equitably among all property owners *or* among owners of homestead property, whereas the tax collectors were evenly divided on the question for all owners and thought that the burden was equitable for owners of homestead property. Most of the comments regarding whether the property tax burden is shared equitably pointed to “Save Our Homes” or to the class of all exemptions as the cause of the inequities.
2. Property appraisers, county tax collectors, and local government officials were all asked to explain the primary purpose of the TRIM process. The responses were varied and wide-ranging indicating that there is no consistent vision of the primary purpose of TRIM in Florida. When asked if TRIM was achieving its purpose, only the tax collectors strongly indicated that it was. Comments on the TRIM notice indicated that the form is confusing, hard to understand and provides too much information.

## *The Report: Purpose and Explanation*

### ***Background***

The authority for taxes based on the value of the property (ad valorem taxes) emanates from the state constitution and, to a lesser extent, state law. The taxes usually apply to both real and personal property; however, this analysis is limited to taxes imposed on land and any improvements thereto. Generally speaking, the revenue generated from the taxes increases as property values increase. However, beginning with California's Proposition 13 in 1978 and continuing through the early 1980s, a series of tax revolts led to extensive limitations on local governments' ability to raise property tax revenue. Today, at least 44 states have some type of restriction in place. These restrictions take the form of limitations on rates (33 states), on assessment increases (six states), and on the amount of additional revenue that can be generated from year to year (27 states).

Several factors have contributed to a desire to alter the existing Florida property tax system. First, the belief that the Save Our Homes constitutional provision has discouraged homeowners from moving to new homesteads has coincided with a slowing of the real estate market. Second, the operation of Save Our Homes has led to concerns regarding tax inequities. And third, double-digit increases in real estate values have given rise to significant increases in property tax burdens. The interplay of these factors makes their individual weights hard to distinguish.

During the 2006 legislative session, no less than 14 proposed constitutional amendments dealing with property taxes were filed for consideration. Many of these took quite different approaches, and consensus on a united direction was lacking. In the end, the legislature passed one limited proposal and provided for an in-depth study of the property tax system, with emphasis on the taxation of homestead property. The legislature also included a \$500,000 appropriation to the Office of Economic and Demographic Research (EDR) to conduct the study. While the language is permissive, the legislation expressly authorizes the use of contracts with state universities or a nationally recognized property appraisal education and certification organization for the purpose of developing findings and policy options to be included in the report. Finally, the legislation gave \$300,000 to the Department of Revenue to analyze the impact of current homestead exemptions and assessment differentials on different types of property.

### ***Legislative Requirements***

The legislative response – Chapter 2006-311, Laws of Florida – requires EDR to prepare a report containing findings and policy options relating to Florida's property tax structure. Among other things, all findings and policy options must apply and consider the following principles of taxation:

- Equity
- Compliance
- Pro-competitiveness

- Neutrality
- Stability
- Integration

Essentially, the final report will be developed over time in three parts:

Part I...A statutorily specified portion summarizing certain data and estimates prepared by the Department of Revenue.

- Impact of current homestead exemptions and homestead assessment limitations on different types of property.
- Analysis of the effect of *Save Our Homes* on:
  - Distribution of property taxes among and between homestead properties, as well as between homesteads and other types of property.
  - Affordable housing, both homesteaded and non-homesteaded.
  - Each county.
  - Distribution of school property taxes.
- Analysis of the impact of extending *Save Our Homes* through portability.
- Analysis of the millage rates adopted by local governments compared to the rolled back rates.

Part II...Areas of research required by statute from EDR:

- Evaluation of the *Save Our Homes* impact on:
  - Homeowners' willingness to purchase a new homestead.
  - Local government budget decisions, including whether the Truth in Millage (TRIM) notification process adequately informs taxpayers of local governments' tax and budget decisions.
- Evaluation of the effectiveness of the TRIM process, focusing particularly on the notice and including alternatives methods of conveying information.

Part III...Other available information coming from:

- The successful award of a Request for Proposal (statutorily required to be a state university(s) or a nationally recognized property appraisal education and certification organization) to a consortium of leading researchers from the University of Florida and Florida State University.
- A legal analysis of Florida's property tax system and alternatives thereto within a constitutional framework.
- Surveys conducted by EDR (including property tax appraisers, tax collectors, school officials and representatives from local government).
- Independent research conducted by EDR.

This document fulfills the requirement to produce an interim progress report prior to the beginning of the 2007 Session. It completes all of Part I and portions of Parts II and III. The primary focus is on the findings related to the Department of Revenue's submission, background material sufficient to develop those findings, and a legal analysis of the various proposals that have been made to revise the property tax system. While much of the ensuing material is statutorily centered on the current Save Our Homes assessment growth limitation, a better understanding of its operation should set the stage for future modifications. In this regard, specific policy options which address the findings – as well as a discussion of their strengths and weaknesses – will be included in the final report due in September 2007.

## *Property Taxes in Florida*

### **Overview**

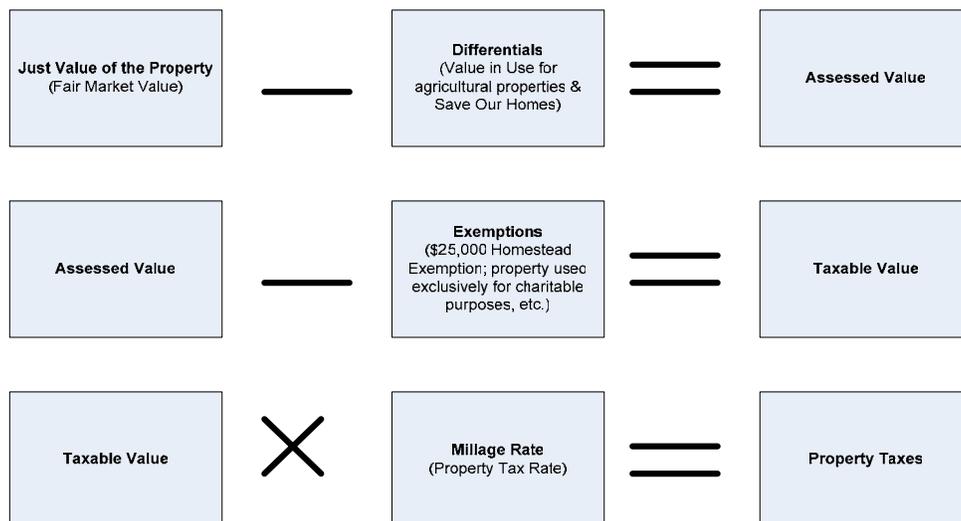
The ad valorem or property tax is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. The taxable value of real and tangible personal property is the fair market (just) value of the property adjusted for any exclusions, differentials or exemptions. Tax bills are mailed in November of each year based on the January 1st valuation, and payment is due by the following March 31.

The Florida Constitution prohibits state ad valorem taxes, while directly authorizing counties, school districts, and municipalities to levy local property taxes. It also provides that special districts may be created and authorized by law to levy property taxes within their jurisdictions.

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean the fair market value or the amount “a purchaser willing but not obliged to buy would pay to one willing but not obliged to sell.” However, section 4 also provides exceptions to this requirement for certain types of property, the most significant of which is the “Save Our Homes” assessment growth limitation.

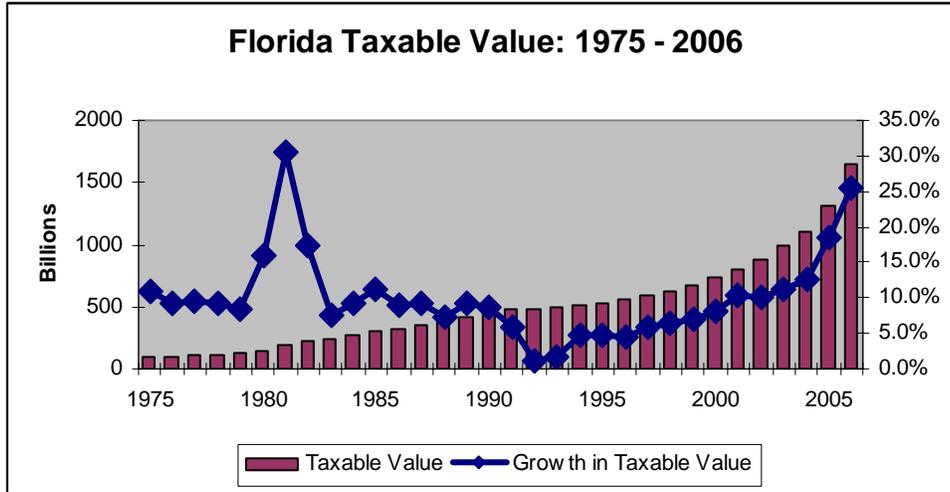
Florida also has a significant limitation on total tax rate levies. With certain exceptions for levies approved by the voters, counties, cities and school districts are limited to a maximum of 10 mills each for operating purposes. Similarly, special districts are limited by the law that establishes them.

Very broadly speaking, the essential operation of Florida’s property tax system takes on the following form; however, the mechanics of implementation vary slightly:



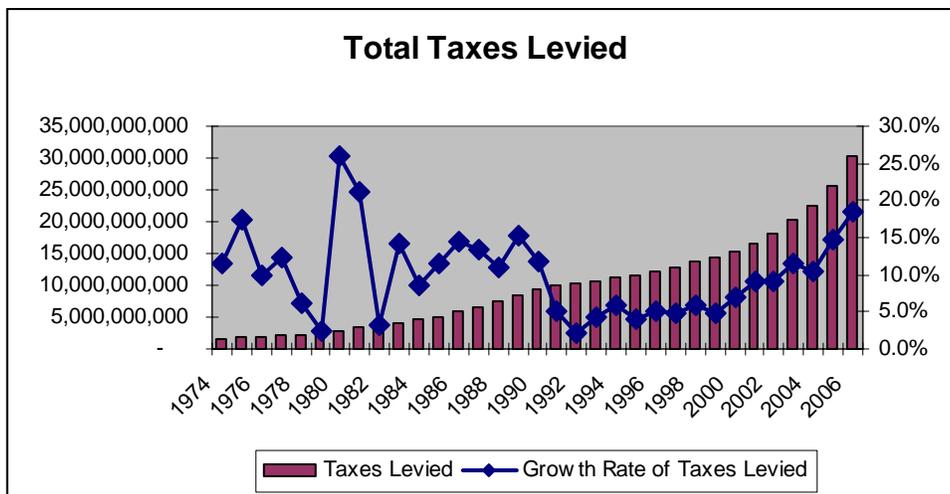
**Florida Property Tax Statistics**

Property taxes have existed in Florida since it was a territory in 1839. The just value of all property in Florida is now approaching \$2.5 trillion dollars. This reflects extraordinary growth considering that the state first passed the trillion-dollar mark in 2000. The taxable value of all property now stands at \$1.65 trillion or 67.5% of the just value.

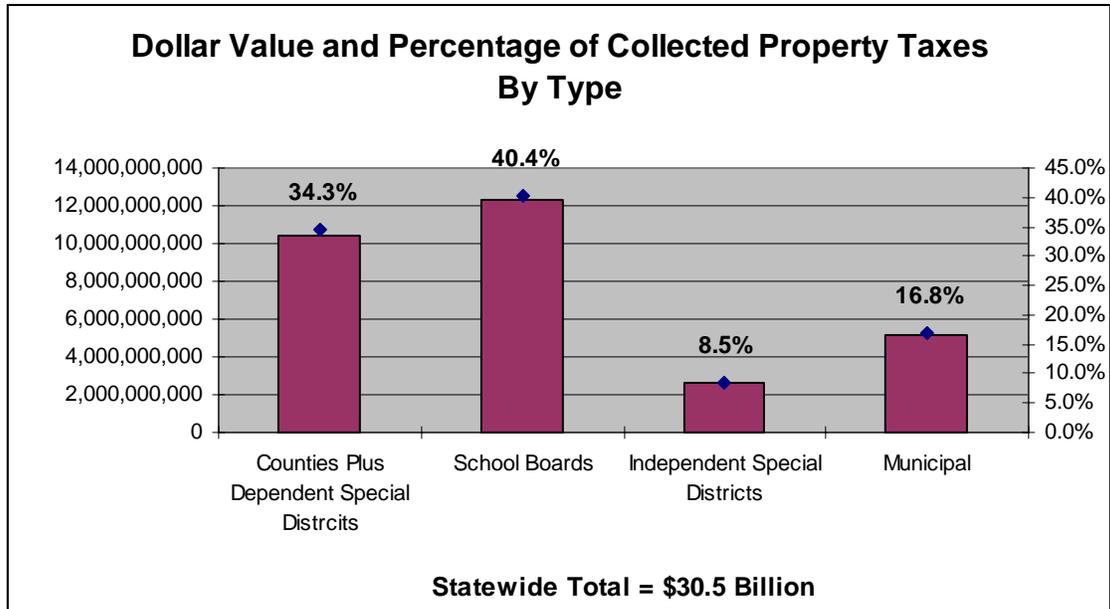


The extraordinary growth from 1980 to 1982 in the charts immediately above and below relates to rapid double-digit inflation and state efforts to increase the overall level of assessment.

The total property taxes levied by all taxing jurisdictions now exceeds \$30.5 billion, with the non-public school jurisdictions (primarily counties and cities) contributing nearly 60% of the total. The relative shares of the total levy between public schools and non-public school jurisdictions have remained relatively stable over the past 30 years with 60% for non-public school jurisdictions and 40% for the public schools. This roughly follows the national distributions in 2000-01 where 44% of all property taxes were used to fund schools.



Dissecting the 2006 statewide total shows that the components of non-public school jurisdictions are individually less than the public schools. Counties (including dependent special districts) come in second to the school districts.



In 2004, \$308 billion in property taxes was collected nationally from local government units including counties, cities and school districts. At the time, Florida represented about 7.2% of the total with \$22.4 billion in levied taxes. According to the Tax Foundation, Florida ranked 19<sup>th</sup> in both property taxes per capita and property taxes as a percentage of income.

### ***Homestead Exemption and Save Our Homes***

While ad valorem taxes in Florida have received much attention over the past two years, this is not the first time they have been a public target. Not surprisingly, the earlier responses to two of the perceived crises focused on additional protection for homeowners.

In 1934, the Florida Legislature proposed the homestead exemption in response to the “abrupt halt in 1926 of Florida’s great land boom and the national hard times of the early 1930’s.”<sup>1</sup> The current homestead exemption provides property tax relief by shielding up to \$25,000 of the assessed value of each qualifying home (e.g. the permanent residence of the owner, or another legally or naturally dependent on the owner) prior to determining the taxable value. Section 196.012(18), Florida Statutes, define a permanent residence as:

*“...that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent*

<sup>1</sup> Florida State and Local Taxes, Volume II, page 144a.

*residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.”*

Today, the amount of value removed from the tax base by the homestead exemption is \$108.5 billion.

More recently, Florida voters initiated and approved a 1992 amendment to the Florida Constitution that provided for a limitation on assessment increases for homestead property as defined above. This amendment is generally referred to as “Save Our Homes.” Under the amendment’s provisions, the growth in the assessed value of homestead property cannot exceed the lower of 3% or the percentage change in the Consumer Price Index, subject to the constraint that assessments can never exceed just value. The following table shows the homestead assessment growth percentage limits since 1995, the first year of implementation. By way of comparison, the annual Save Our Homes limits are shown next to the increase in median sales price for existing homes for the same years.

<b>Year</b>	<b>Save Our Homes Limitation</b>	<b>Median Sales Price of an Existing Home</b>
<b>1995</b>	2.7%	2%
<b>1996</b>	2.5%	5%
<b>1997</b>	3.0%	4%
<b>1998</b>	1.7%	6%
<b>1999</b>	1.6%	7%
<b>2000</b>	2.7%	7%
<b>2001</b>	3.0%	9%
<b>2002</b>	1.6%	9%
<b>2003</b>	2.4%	12%
<b>2004</b>	1.9%	17%
<b>2005</b>	3.0%	29%
<b>2006</b>	3.0%	6%

With only one exception (1995), the increase in market price outstripped the limitation. Of particular interest, the 3% limitation was lower than the growth in the Consumer Price Index in 1997, 2001, 2005, and 2006. Over the entire period, this has the practical effect of producing lower real tax bills for homesteads in 2006 than in 1995, after adjusting for inflation. The statewide average millage rates have also been dropping since 1996, further enhancing this effect.

After any change in ownership, homestead property must be assessed at just value as of January 1st of the following year. From the local government perspective, the conversion of differentials to taxable value becomes analogous to a reprieve. The turnover of a house is, in essence, a beneficial outcome following a period of constrained taxable value growth. In addition, new homestead property must be assessed at just value as of January

1 of the year following establishment of the homestead, with the assessment growth limitation applying thereafter.

While the Save Our Homes provision protects a homesteaded property's taxable value from increasing in years that see substantial increases in just value, that protection comes with a limited recapture provision. In years when a homestead's just value is decreasing, or increasing at a rate that is less than allowed under the amendment, the taxable value of a homesteaded property must still increase by the lower of the change in CPI or 3%, so long as the resulting assessed value does not exceed the just value.

The difference between the homestead's just value and assessed value is commonly referred to as the Save Our Homes differential. Since the amendment was implemented in 1995, the average annual growth rate of the Save Our Homes differential has been 54.4%, reaching \$404.4 billion in 2006 (24.5% of total taxable value). While the compounding effect of this growth has been the most striking in the past few years, the exponential growth rate in the differential is not expected to continue. The Department of Revenue believes that additions to taxable value from turnover within the next several years will begin to balance increases in the differential due to property value growth. Outside researchers under contract to the Office of Economic and Demographic Research believe it may take a much longer period of time than this to stabilize.

At the start of the Save Our Homes assessment limitation in 1995, there were 3,384,848 homestead parcels. Today 1,320,400 (or 39%) of the original cohort are still in their homes. They have received the maximum protection available under Save Our Homes.

### ***Tax Rates***

The millage rate applies to the levy of taxes. While it is more commonly referred to as the tax rate, the millage rate is unique in that it is expressed as a percentage of property value. It is set by local taxing authorities for counties, school districts, municipalities and special districts.

The term "mill" means one one-thousandth of a dollar. In this regard, ten mills is the same as a tax rate of 1%. School districts, counties and municipalities are limited to a maximum of ten mills for their operations and maintenance. Water management districts are limited to one mill with the exception of the district for the northwest portion of the state which is limited to 0.05 mill. Special districts operate slightly differently. Tax rates for dependent special districts are included in the millage rate and cap for the county or city that established them. Independent districts have millage rates that are separate, but limited by the law that established them. Depending on the level of property wealth and taxable value within any given area, these restrictions can have differing practical effects on funding.

The total tax rate is the combined tax rates of all taxing authorities having jurisdiction over property in the county. Each tax bill consists of the total of all millage applicable to the particular property. It also itemizes the associated taxes owed to each of the taxing

authorities having jurisdiction over the property. In 2006, the statewide tax rate equates to 1.847% or 18.47 mills.

### ***School Funding***

Property taxes provide a significant part of the overall school funding in Florida. In deference to this importance, the Florida Education Finance Program (FEFP) was established in 1973 to equalize funding across the school districts. The rationale behind 'equalizing' the funding by providing more state revenue in some areas than in others is to remove the distortion and unfair advantage that local property wealth may create. Specifically, the FEFP funding program recognizes: (1) varying local property tax bases; (2) varying education program costs; (3) varying costs of living; and (4) varying costs for equivalent educational programs due to sparsity and dispersion of student population.

The Legislature annually determines the level of overall education funding as part of its budget development process. The portion of this funding that comes from local property taxes is known as the Required Local Effort (RLE). This is the amount that each county must produce in order to participate in the FEFP. While the General Appropriations Act only establishes the total required funding level, there is necessarily an implied statewide millage rate that generates that amount. Supporting work papers show the required funding level attributed to each county and the associated millage rate needed to achieve it. That result is calculated by multiplying school taxable values for each county by the projected millage rate established by the Legislature.

These local rates are adjusted for differences in local levels of assessment. They are also capped so that no district generates more than 90% of the total state and local funds for that area. This generally occurs in counties that have relatively large property values coupled with a relatively low number of students. In 2006, ten school districts qualified for this adjustment. Finally, the millage rates are recalculated in July after the receipt of the final tax roll. Statewide, 45.8% of the FEFP is currently funded with Required Local Effort revenue.

In addition to the RLE, there are several local option property taxes for school boards: (1) an additional millage rate established in the General Appropriations Act for operations referred to as the nonvoted discretionary millage; and, (2) an additional 2 mills for capital improvements. Currently, the maximum nonvoted discretionary millage is 0.51 mills which is unequalized and an additional 0.25 mills which is equalized by the Legislature to \$50 per full-time equivalent student. Finally, there are two additional millages that can be levied by school boards with referendum approval.

County taxable value and school taxable value are not equal. Beginning in 1984, county taxable value became slightly less because of the economic development tax exemption for new and expanded businesses. There are also other constitutionally authorized local-option exemptions and assessment limitations that do not apply for school purposes.

## *General Literature Review and Florida Relevance*

### *Property Tax Structure*

The property tax is fairly unique among revenue sources. It is based on an immovable stock of wealth that transfers ownership from time to time. Because the value of the property *is* the base of the tax, the essence of ad valorem taxation has become one of its most common criticisms – that it has little relation to household income and ability to pay. As one property appraiser noted in a survey response, “An ad valorem system of taxation does not consider the ability of an owner to pay, but rather what a property is worth.”

Because they are based on value, property taxes lead to fiscal disparities between local governments. Geographic areas with larger tax bases (in terms of size or value) can raise more dollars from the same millage rate than a less populated or endowed community.

### *Tax Incidence*

There is still much debate regarding who bears the greatest burden of property taxation. Many economists believe that property taxation is a local “benefit” tax – that is, a component of a nondistortionary fiscal system where taxpayers pay in proportion to the amenities or services they receive from government. Essentially, the tax becomes a fee for service or a sales price in a service market where the economic good is delivered by the local government. This means that the highest tax burden (akin to a user fee in this model) should fall on the persons receiving the most benefits, thereby creating a neutral result where the question of incidence is inconsequential.

Other views are largely based on the underlying perception of what is being taxed. Some economists argue that the property being taxed is essentially a capital good. Holders of this theory (frequently called the “new view”) believe that the tax is progressive, leading ultimately to a redistributive transfer from the rich to the poor. It is also distortionary, making the allocation of capital inefficient across jurisdictions and prodding local governments to deliver suboptimal or low levels of service. There are several strong arguments against the property being considered exclusively a capital good. Foremost among these is the existence of zoning. It keeps the emphasis on the pure housing and land value since the local government ultimately controls future use and development and therefore the supply of capital. Moreover, many analyses of the new view assume that local property taxes essentially collapse into a national system of property taxes over time. This requires a stretch – local property tax systems vary significantly and are constantly in flux. And finally, the results of the new view only become known after a full adjustment is achieved in the long-run. This may take a considerable amount of time. In the interim, the new view behaves strongly like the benefit view, allowing strong reliance on those results for shorter-term analyses.

A few others argue that the taxable good is housing, thereby making the tax regressive and unfairly burdensome to low- and moderate-income homeowners, particularly the elderly. Proponents of this view believe that poorer residents pay a greater percentage of their income in property taxes than wealthier residents.

Regardless of the specific view espoused, increases in local property taxes are borne by both capital owners (who may or may not live in the taxing jurisdiction) and homeowners – the question involves the economic implications of their ownership.

### ***Tax Exportation***

The specific impact of the property tax burden in a particular state is also affected by the ability to export taxes elsewhere. For example, property taxes are deductible from federal taxable income for persons who itemize on their tax returns. This affects individual taxpayers' burdens disproportionately, but benefits the state as a whole to the extent that some of the overall tax burden is exported to the federal level.

The economic incidence of property taxes related to non-homesteaded properties clearly has even more unique features than the federal tax implications. In this regard, exported taxes would be those property taxes paid by owners – or shareholders – of commercial or industrial establishments living outside the state of Florida and the investors / vacationers in second homes or rental properties who primarily live elsewhere. One frequently quoted study found that 52 cents from each dollar in property taxes paid for commercial property comes from nonresidents of that jurisdiction. Of course, only a subset of this amount would be exported completely out of the state. A study by the Minnesota Department of Revenue indicated that the incidence of the Minnesota business real property tax in 2000 was:

- 32% to consumers
- 2% to labor
- 24% to capital
- 42% to non-residents

Several studies have also found that commercial and industrial investment tends to be more responsive to tax rates than residential investment. This means that the increasing shift of the property tax burden to businesses may cause them to reduce or eliminate commercial investment – in some instances, leading them to investments in other states where the property taxes are less burdensome.

The number of out-of-state owners of second homes in Florida is likely significant, but is currently unknown. Recent statistics show that second-home buying splits between vacation homeowners buying primarily for personal recreational use (36%) and investors buying to rent to others (64%). In regard to vacation homeowners, the *2006 National Association of Realtors Profile of Second-Home Owners* indicated that only 49% of buyers bought within their own state, making Florida a candidate for a portion of the remaining 51% of sales. On the other hand, 84% of investors bought inside their state.

The report also notes that *recent* owners of vacation homes are more likely to purchase a home in a region different from where their primary residence is located.

A 2005 version of Association of Realtors' report found that 40% of *all* homes sales in 2005 were second homes (more than 3.3 million sales) – up from 35% in 2004. For vacation homebuyers, access to resort and recreation areas, particularly water-related sports, was the primary motivation for the purchase. Nearly a quarter of the purchases were also made with the intent of making the home the primary residence in retirement. Based on the demographic attributes of those buying these homes and the type of homes they seek, it is reasonable to assume that Florida captures a significant percentage of the second-home sales – and the ability to export these taxes out of state.

### ***Equity Issues***

Property tax equity is generally evaluated using two different measures of uniformity. Horizontal equity occurs when property owners with properties of equal value pay the same tax. Vertical equity means that those with more valuable property pay a higher tax. An equitable tax system is generally perceived to be fair and desirable.

### ***Exemptions (including preferential assessment such as Save Our Homes)***

Exemptions shrink the property tax base and, in Florida, reduce the total capacity to raise revenues.<sup>2</sup> They also shift the property tax burden (and cost for public services) from the exempt entity to nonexempt entities. According to one property appraiser, “Exemptions do not limit taxes, they ‘transfer’ the taxes from exempt properties to non-exempt properties.”

To the question of whether such a transfer is justified, there are several theories. First, to the extent that property taxation is not a true benefits tax, exemptions can be used as a device to gain greater economic efficiency. For example, homestead or income-based exemptions can be used to correct existing regressivity. Second, they may be used to correct market failures such as the valuation of public goods or other instances where the free market does not achieve the socially optimum level of pricing. In this regard, it is possible that *unanticipated* property tax increases could be viewed as a partial market failure; however, one analysis makes the following observation regarding the danger of granting aid without properly measuring need:

*Tax relief, whether via credits or preferential assessment, assumes that the true burden of the property tax is measured by actual tax payments by current landowners. However, if property taxes are capitalized into a decreased market price of the property, as is usually assumed by economists, the current owner bears only that part of the tax that was increased or not anticipated to increase during his ownership tenure. The relief granted may therefore not be justified.<sup>3</sup>*

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<sup>2</sup> Florida has maximum millage caps. See the previous discussion under tax rates.

<sup>3</sup> Quote taken from the *Encyclopedia of Taxation & Tax Policy, Second Edition* edited by Joseph J. Cordes, Robert D. Ebel, and Jane G. Graville.

Most economists would argue against the attempt to use property tax exemptions simply to achieve redistributions of income. Generally these efforts have failed to achieve meaningful redistribution, and the concept itself is contrary to the idea of a tax on the property discussed earlier. For example, arguments have been made that rising property taxes are particularly onerous for senior citizens. The concern is that there is too wide a disparity between taxes owed and the ability-to-pay. However, Florida's seniors have much lower poverty rates than any of the age groupings from 18 to 54, and experience from other states would indicate that such exemptions attract more of the group being benefited to the detriment of everyone else who has to pay higher taxes.

While Florida generally mandates that local governments absorb the cost of exemptions, at least 11 states reimburse local governments for that cost, and many more offer credits from the state as a relief from taxes paid.

Finally, studies have shown that tax breaks for residential property (such as Save Our Homes) will increase housing prices. The converse is also true – higher property taxes suppress housing prices, all else being equal.

### *Florida's Save Our Homes*

Although the constitutional provisions for Save Our Homes were not implemented until 1995, the value of this assessment limitation has grown considerably since then, to the point that some homeowners assert that they do not want to move to a new homestead because of the higher taxes they will have to pay. Also, a number of observers have noticed that similarly situated neighbors are paying higher or lower taxes than their neighbors based only on the period of time they have owned their home. To the extent this is true, horizontal inequities are introduced into the tax system.

According to the Tiebout hypothesis, an individual chooses where he or she wants to live based, at least in part, on weighing costs (taxes) against benefits (public services). In turn, local governments compete for residents through their individual mixes of taxes and services. In this sense, the state houses many local government “marketplaces.” People “vote with their feet” among them, thereby creating an economically efficient result where taxes are kept low and services are increased. Moreover, property values in those geographic areas with the most desired mix of low taxes and good services should be higher than in those areas with less optimum mixes. The obvious question is: do residents really have full mobility? If the answer is no, the efficiency evaporates. In the same manner, to the extent that Save Our Homes impedes mobility or shifts the tax burden to others without a commensurate increase in services, then the local tax structure becomes sub-optimal.

From a purely economic perspective, there is virtually no theory that endorses a system which creates significant differences in tax burdens on otherwise similar homes receiving the same local government services within a community. The theory that comes the closest attempts to show that new homeowners place a greater burden on the local

government. In this case, the incremental increase in property taxes begins to resemble an impact fee or additional growth premium which some economists would support as economically efficient. However, even this theory begins to break down when the sale is from an existing homeowner to an existing homeowner.

On the other hand, there are economic studies which suggest that any differential tax treatment between similar homes within a community will be internalized into the sales value of the home through a process referred to as “capitalization.” In the theoretical framework, the house value encompasses the physical home, the public service array, and their associated costs. In this case, the cost of government services equals the property tax burden. New homebuyers – knowing that they will face a higher property tax burden than their longer term neighbors – will demand lower initial sales prices. Effectively, the house is not worth as much to the prospective buyers because they will have to pay more for the same services. Assuming the just or fair market value of the home reflects the previous mix of services and taxes, the prospective homebuyer would discount that amount by the anticipated higher tax burden.

Working in the opposite direction, a *first-time* homebuyer has to factor in the long-term benefit of limited growth in assessments relative to living in unprotected rental property. This analysis would make the first-time buyer more willing to pay a premium. The net result of the two calculations determines the first-time buyer’s paying price. On the other hand, the seller wants to be compensated for the loss of the tax benefit. Here, the incentive is for sellers to ask for higher prices than they would in the absence of the Save Our Homes protection. In both cases, the marketplace ultimately compensates for the differential tax burden at the time of sale.

Once in the home, the new owner begins to realize property tax savings relative to the environment faced by later buyers. Moving to another location then becomes subject to a cost-benefit analysis. If the increased taxes at another location are sufficiently higher than staying put, some marginal buyers may experience a “lock-in” effect where the most rational decision is not to move, even though they may otherwise desire to do so. However, research has shown that there are many factors stronger than taxes involved in the final decision to move, making the ultimate tipping point vary from situation to situation. The primary reason for a move outside the county of prior residence is usually work-related, but family-related and housing-related reasons are also common. Each of these would be assigned value in the cost-benefit analysis.

Because of the accumulating nature of the benefit over time, the Save Our Homes limitation is of greater assistance to people who seldom move than to those that move frequently. Studies have shown that seniors and low-income families have considerably less mobility than the rest of society. So who is likely experiencing the ‘lock-in’ effect? By and large, it is the more frequent movers who were already destined to receive less than the maximum potential benefit, meaning they are getting a greater benefit than they otherwise would have by staying longer in the home. However, this is still not an efficient market result.

Volatility in prices will also affect the decision to move. The value of the Save Our Homes benefit grows when housing prices are increasing, causing less incentive to sell in times of rapid price appreciation. Conversely, the benefit is of lesser value when prices are falling or growing slowly. This would be particularly true in Florida where the assessments *must* increase at either 3% or the rate of growth in inflation, whichever is less. At times, Save Our Homes recipients will experience higher assessments and, therefore increased taxes, when no one else would.

### ***Lessons from Proposition 13***

While limited to owner-occupied housing, the Florida Save Our Homes provision produces an effect in some ways similar to Proposition 13 in California. Passed in 1978, it was the first in the wave of states to conduct sweeping property tax reform. Among other things, Proposition 13 allows California's property tax assessments to rise by no more than the rate of inflation or 2% per year, whichever is less, unless the property has been improved. If the properties are sold, they initially rise to market value and then are capped again to 2% assessment escalators; this is frequently referred to as an "acquisition tax" feature. In addition, the maximum statewide tax rate is 1% of the just value, known there as the full cash value of the property. In 1986, California voters passed a version of limited portability by allowing residents aged 55 and older to carry the benefit with them if they moved within participating counties to a residence valued at no more than the old residence's selling price.

Because Proposition 13 has been in place so long, several conclusions have developed regarding its practical effects. First, Proposition 13 has caused a series of horizontal inequities. Under acquisition-value taxation, a differential tax burden is placed on new versus existing property owners. So long as the actual growth in property value exceeds the limitation, a widening gap appears between the taxes paid by existing owners and new purchasers. In addition, virtually identical properties have significantly different tax bills.

Second, the total disparity or differential generally grew faster in hot real-estate markets with strong price appreciation and contracted during sluggish real-estate markets. However, rapid turnover in housing and shorter tenures also put downward pressure on the size of the differential.

Third, other studies have found that acquisition-value taxation has posed a penalty on mobility, most suggesting that tenure increases with the size of the benefit.<sup>4</sup> One study found that the lock-in effect in California – while detectable – was relatively small because of the capped maximum statewide tax rate of 1%; however, the authors predict that this effect would substantially increase at higher tax rates.

And fourth, the assessment growth limitations may not meaningfully constrain the long-term growth of government by themselves. Local governments in California learned to rely on other sources of funds, including increased fees and charges and the establishment

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<sup>4</sup> See in particular various studies by Arthur O'Sullivan, Terri A. Sexton and Steven M. Sheffrin.

of special assessment districts, to offset the lost property tax revenue. While there was an initial slowing in the growth of state and local government revenues and expenditures, they fairly quickly returned to trend levels. Other studies have found the opposite effect in different states. The variation appears to be related to the nature of the limitation.

## *Overview of Truth In Millage*

If for no other reason than appreciation, property values tend to grow over time. Likewise, property tax revenues generated from a constant millage rate would grow without the political risks inherent in overtly raising taxes. The Truth-In-Millage (TRIM) process is designed to prevent this from occurring outside of the public's awareness.

In the absence of TRIM, there is strong reason to believe that some public protection would be lost. Several studies (Bloom and Ladd-1982 and Holtz-Eakin and Rosen-1989) found that the size of local government matters in the treatment of potential windfall receipts. From their works, it appears that larger local governments (those having populations over 100,000) are more likely to reap the benefits of windfalls by keeping a greater portion of the increased spending potential.

To deal with these issues, the Florida Truth-In-Millage (TRIM) Act was passed in 1980. According to the Department of Revenue, "This law is designed to inform taxpayers which governmental entity is responsible for the taxes levied and the amount of tax liability owed to each taxing entity." The common perception is that the process is intended to focus attention on the taxing authorities who set the rates and away from the property appraisers who simply make the assessments. There is at least some evidence to support this view. A summary of the legislation prepared contemporaneously by Senate staff indicated that the intent was:

*To dispel the notion that higher assessments necessarily cause higher taxes. To direct taxpayer concern over the level of taxes away from the PAAB<sup>5</sup> hearing and toward local budget hearings. To afford taxpayers the means of effectively participating in the budget and tax setting process, and specific knowledge of how the process impacts them.*

However, the Senate preliminary and final bill analyses published during the session states that the intent is to "maximize public involvement in the decisions of local governments to raise property tax revenues." Regardless, the overall process attempts to ensure taxpayer awareness of proposed millage changes, to identify the impact of changing budget levels, and to make comparisons relative to the rolled-back rate.

Yet, the statute does not provide a precise definition of exactly what is meant by the key terms, nor does it provide a general purpose statement. When property appraisers and local government officials were asked in recent EDR surveys what they believed to be the primary purpose of the TRIM process, the responses were so varied and wide-ranging that they could not be meaningfully grouped and categorized. When tax collectors were asked the same question, more uniformity appeared, but the emphasis was primarily on the amount of taxes owed. The budgetary aspect was generally downplayed. This lack

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<sup>5</sup> Property Appraisal Adjustment Board (now called the Value Adjustment Board).

of a consistent vision of TRIM among the entities on the frontline of the process points to a potential need for clarification and modification of the statutes.

### ***Rolled-Back Rate***

Today, the linchpin of the process is the rolled-back millage rate. This rate is calculated as the millage which provides the same dollar value of ad valorem tax revenue for the taxing authority as was levied during the previous year. Only existing properties are included in the calculation. The rate calculation does not include the value of new construction, additions, rehabilitative improvements increasing assessed value by at least 100%, annexations or deletions. More simply, the rolled-back rate can be thought as “the millage that would raise the same tax dollars that were levied in the previous year if levied against the current year’s tax roll minus the value of new construction.” New construction is excluded in order to allow local governments an adjustment for growth. Tax revenues are allowed to grow by the amount generated from new construction without the need to advertise a tax increase.

For any given individual, a difference in the rate of taxes between the rolled-back-rate and the proposed rate is associated with the local government’s tax and budget decisions. Conversely, an increase in taxes in the absence of a final rate higher than the rolled-back rate is attributable to an assessment increase by the property appraiser.

### ***Process***

The TRIM process consists of two public hearings to adopt the tentative and final budgets and required millage rates to fund them; the TRIM notice (Notice of Proposed Property Taxes) mailed out to taxpayers; and newspaper advertisements. The timetable and form of each of these components is tightly prescribed by law.

The purpose of the public hearings is twofold: (1) to ensure that the decisions are discussed and made publicly; and (2) to allow the public an opportunity to participate. Except for school districts, where the order is reversed, the taxing authority’s first public hearing is advertised on the TRIM notice, and the second is advertised in a newspaper. At both hearings, the discussion focuses on any increase in the millage rate over the rolled-back rate, and – if increased – the specific reasons why the rate is being raised. The difference between the two hearings is simply the sequencing. The first hearing produces the tentative millage rate and budget, while the second produces the final millage rate and budget. Final action is in the form of two votes, first to adopt the millage rate and then to adopt the budget. Compliance with the entire TRIM process must be completed within 101 days.

## *Findings Based on the Department of Revenue Data*

Section 3 of Chapter 2006-311, Laws of Florida, required the Department of Revenue to provide certain materials to the Office of Economic and Demographic Research, which would in turn develop a report containing *findings* and *policy options* relating to Florida's property tax structure. According to the legislation, the department's required submissions were to take the following form:

- Impact of current homestead exemptions and homestead assessment limitations on different types of property.
- Analysis of the effect of *Save Our Homes* on:
  - Distribution of property taxes among and between homestead properties, as well as between homesteads and other types of property.
  - Affordable housing.
  - Each county.
  - Distribution of school property taxes.
- Analysis of the impact of extending *Save Our Homes* through portability.
- Analysis of the millage rates adopted by local governments compared to the rolled back rates.

All of the property tax data used in the department's analysis is historical and unadjusted by future projections or forecasts. While the complete set of materials is attached in Appendix A, only selected components are referenced in the ensuing discussion of the findings made by the Office of Economic and Demographic Research.

As an organizing framework, the law further required the Office of Economic and Demographic Research to consider and address the following principles of taxation when developing its findings:

- A. Equity – The Florida tax system should treat individuals equitably. It should impose similar tax burdens on people in similar circumstances and should minimize regressivity.
- B. Compliance – The Florida tax system should facilitate taxpayer compliance. The system should be simple and easy to understand so as to minimize compliance costs and increase the visibility and awareness of the taxes being paid. Enforcement and collection of tax revenues should be accomplished in a fair, consistent, professional, predictable, and cost-effective manner.
- C. Pro-competitiveness – The Florida tax system should be responsive to interstate and international competition in order to encourage savings and investment in physical plants, equipment, people, and technology in this state.

- D. Neutrality – The Florida tax system should affect competitors uniformly and not become a tool for social engineering. The system should minimize government involvement in investment decisions, making any such involvement explicit, and should minimize pyramiding.
- E. Stability – The Florida tax system should produce, in a stable and reliable manner, revenues that are sufficient to fund appropriate governmental functions and expenditures.
- F. Integration – The Florida tax system should balance the need for integration of federal, state, and local taxation.

The next sections of the progress report focus on the actual findings. They are based solely on the department’s historical data and are not supplemented with materials from any other source. This data-driven process makes them distinguishable from the findings of several other studies which were developed more broadly from perceptions and public testimony. Simply put, these findings are based on what we know has happened. They are listed below and discussed in greater detail on the following pages.

1. As intended, the Save Our Homes Amendment has suppressed the taxable value of homestead properties in Florida. In doing so, it has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property.
2. The impact of Save Our Homes varies considerably by county; however, the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida. Because larger differentials lead to greater tax shifting, non-homestead residential and non-residential property owners in those counties have increased tax burdens.
3. A direct outcome of the Save Our Homes tax preference is that dissimilar tax burdens have been placed on homeowners in similar circumstances, based solely on length of ownership. This is a horizontal inequity.
4. The dissimilar nature of the tax burden caused by Save Our Homes has an impact on the overall affordability of housing for individual buyers, but more research needs to be conducted prior to determining whether the increased burden is cost prohibitive to homebuyers and renters.
5. The Save Our Homes protection has made it possible for homeowners on the margin to remain in their homes longer than they otherwise could have, but more research needs to be conducted on existing homeowners’ ability-to-pay prior to determining the magnitude of this effect.

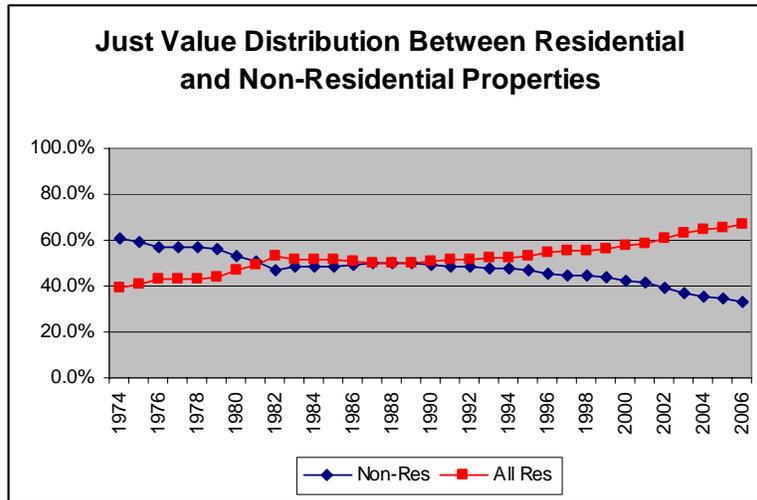
6. The presence of the Save Our Homes assessment growth limitation has had a detectable impact on the distribution of the state-funded portion of the FEFP in Florida. While the total funding per student is not affected, the mix of local and state funding is altered between school districts. This in turn affects the local property tax burden. Approximately \$135 million or 1.8% of the total required local effort has been impacted.
7. To the extent that the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida (as previously found), these areas have disproportionately benefited from the interaction of the FEFP with the Save Our Homes protection, while the other areas have experienced higher school property taxes than they otherwise would have.
8. Adoption of portability will further reduce tax rolls below the levels they would otherwise have attained.
9. Full portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$13.6 billion in the first year. This reduction in taxable value would grow to \$65.0 billion in the fifth year. At the 2005 average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues ranging from \$267 million in 2008 to \$1.3 billion in 2012, if millage rates were held constant.
10. In operation, portability is merely an extension of Save Our Homes. Because the differential can be transferred from one home to another, portability has the practical effect of intensifying all of the previous findings related to Save Our Homes. Both the magnitude and duration of the effects are increased.
11. According to the Department of Revenue, for the 33 year period from 1974 to 2006, Florida taxing districts as a whole levied below the rolled-back rate in three years, and those were related to identifiable external events. For the entire period, local taxing jurisdictions levied millages that were an average of 6.1% above the rolled-back rate. For public school levies, this average was 5.8%, and for all other taxing jurisdictions, 6.4%. To the extent that homesteaded properties were protected by Save Our Homes, the tax increases fell disproportionately on non-homesteaded properties.
12. While the dollar value of the property tax burden may have increased for many Floridians, this does not translate directly into statements regarding individual affordability and ability-to-pay. Homesteaders are shielded from the full impact of tax increases at the expense of non-homesteaders.

13. The impact of Save Our Homes on net property tax burdens is difficult to assess without additional study. Personal wealth as reflected in higher just values is not fully captured by measures of personal income, and tax exportation to other states and the federal government is rarely taken into account.
14. Because Save Our Homes has shielded homesteaded property owners from the full effect of tax increases, the visibility and awareness of the taxes being paid has been reduced, potentially leading to an over-demand of services.

The most commonly mentioned proposals for changing the property tax system are discussed in a later section of the report. However, the pros and cons of policy options to address the specific findings listed above will be contained in the final report which is due September 1, 2007.

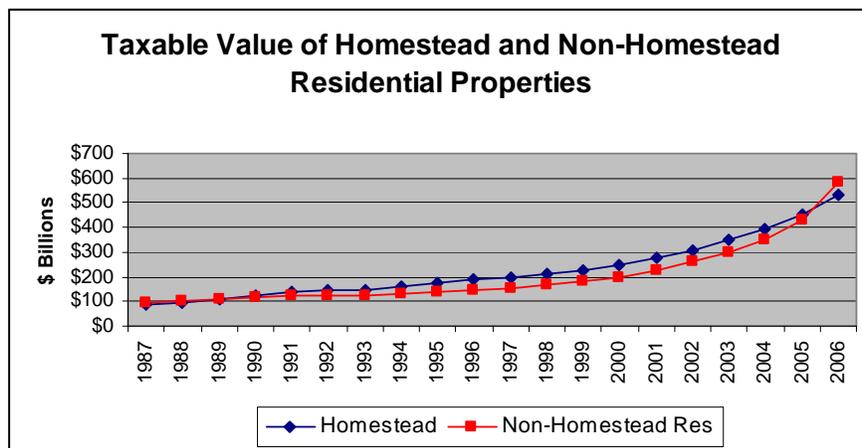
## *Distribution of Property Taxes Across Property Types*

According to the Department of Revenue, the central trend in the distribution of Florida’s property tax burden over the past 32 years has been the shift in the proportionate share of just value away from non-residential property and toward residential property. By 2006, non-residential property made up nearly one-third of the total just value in the state, while residential property accounted for two-thirds.

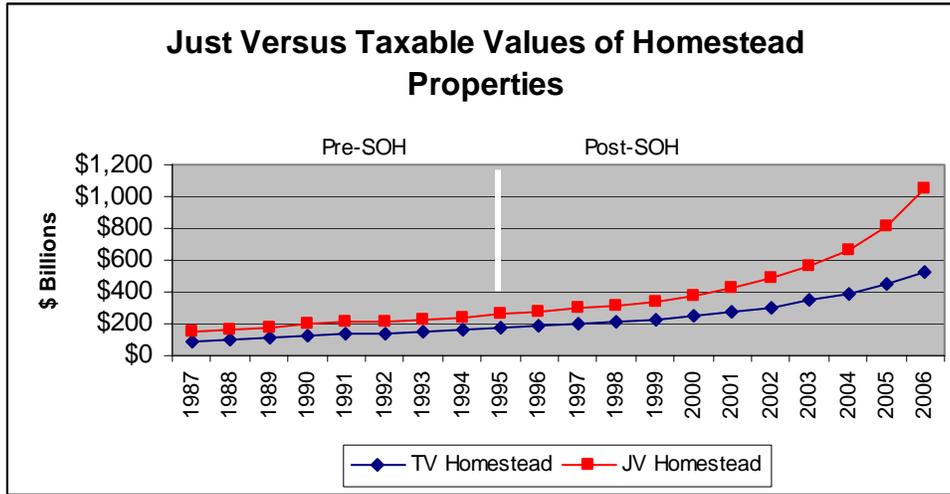


The same overall trend and end-result hold true for taxable value, although the starting points differed. The taxable value of non-residential and residential properties started closer together, but ended with the same proportions as just value.

While the just value of homestead property in Florida is nearly twice as much as non-homestead residential properties, its taxable value is now less due to the effects of the Save Our Homes amendment. However, this has not always been the case. The long-term shift in value from non-residential properties to residential primarily affected homestead properties, propping up the taxable value of homestead properties relative to non-homestead residential through 2005 – even with the Save Our Homes protection.



Left unchecked by Save Our Homes, the increase in the growth of just value would have passed into taxable value. Reflecting the amount of value removed from the tax rolls, the Save Our Homes differential has grown from \$3.5 billion in 1995 to \$404.4 billion in 2006. To put this in better context, \$404.4 billion is nearly one-quarter of the taxable value of all property in the state. As intended, the Save Our Homes Amendment has suppressed the taxable value of homestead properties in Florida.



In doing so, Save Our Homes has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property. This is because the property tax system is a closed universe. To ease the burden on one segment and still raise the same amount of revenue, the burden is increased on everyone else. A comparison of the 2006 data, with and without the effect of Save Our Homes, shows that homestead property would make up 45.5% of all taxable value in the absence of the amendment’s protection. With it, homestead property only garners 32.1% of the roll.

	Percent of Taxable Value	
	Current	W/O SOH
<b>Homestead Property</b>	32.1%	45.5%
<b>Non-Homestead Residential</b>	34.5%	28.4%
<b>Non-Residential Property</b>	32.5%	26.1%

From the above chart, it is clear that the proportion of taxable value attributable to non-residential and non-homestead residential property has increased substantially as a result of Save Our Homes. According to Department of Revenue data, to raise the same amount of revenue without Save Our Homes in 2006, taxes paid by homestead property owners as a group would increase by approximately 40% and all other property owners would experience approximately a 20% reduction.

**Findings from This Section...**

- *As intended, the Save Our Homes Amendment has suppressed the taxable value of homestead properties in Florida. In doing so, it has significantly shifted the tax burden away from homestead property and onto non-homestead residential and non-residential property.*

**Discussion of the Principles...**

- A. Equity – Because of Save Our Homes and other exemptions, the Florida tax system does not treat all individuals equitably. The tax burden has been shifted onto non-homestead residential and non-residential property, increasing the regressivity of the tax system for residential renters of lower incomes.
- B. Compliance – Because Save Our Homes has shielded homesteaded property owners from the full effect of tax increases, the visibility and awareness of the taxes being paid has been reduced, potentially leading to an over-demand of services.
- C. Pro-competitiveness – To the extent that the tax burden has been shifted to non-residential properties, Florida businesses may be at a disadvantage with respect to interstate and international competition. In this regard, savings and investment in physical plants, equipment, people, and technology in this state may have been suppressed.
- D. Neutrality – Save Our Homes has likely increased government involvement in private investment decisions, by shifting the relative tax burdens.
- E. Stability – Not related to this finding.

## *Impact of Save Our Homes Across Counties*

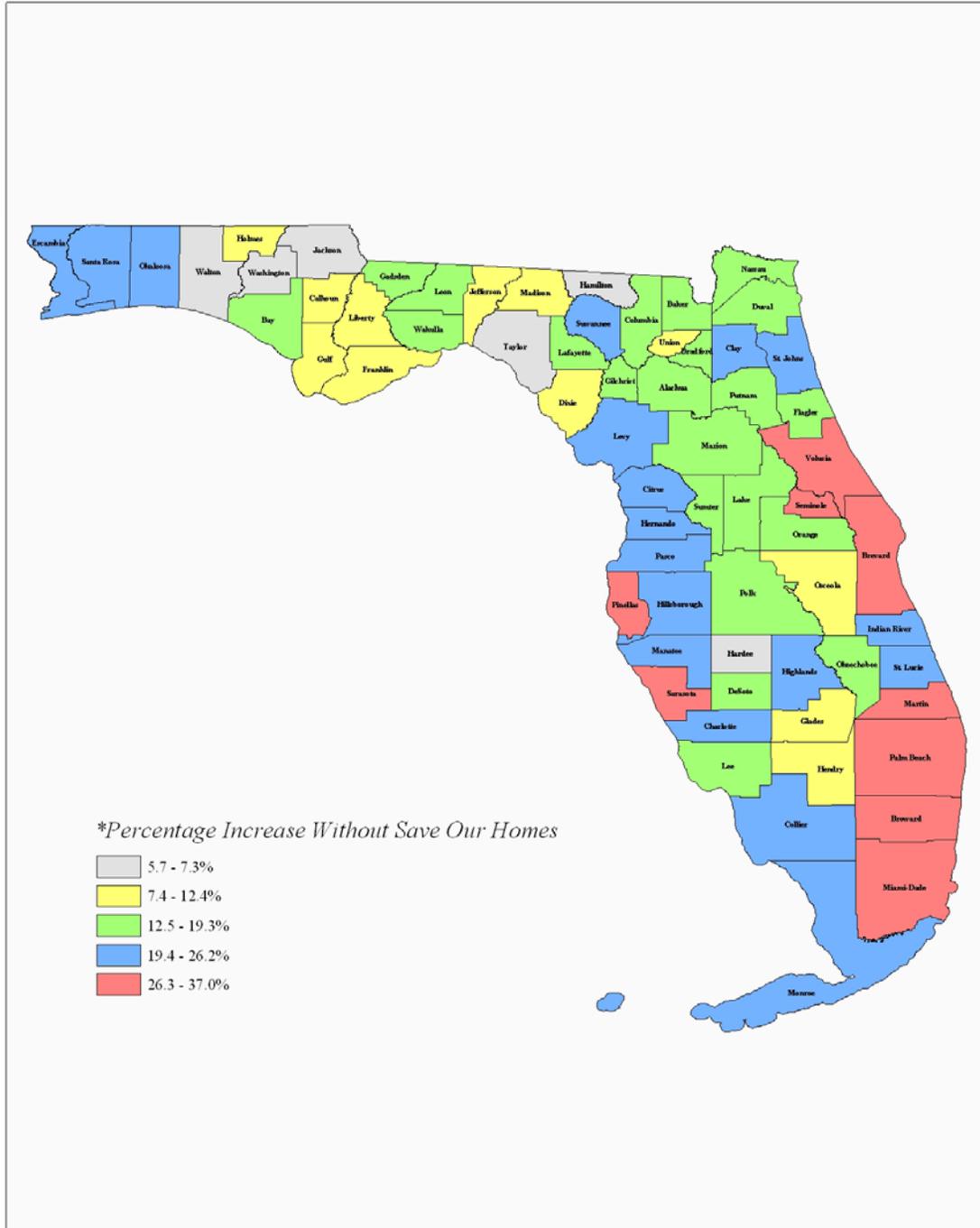
The impact of Save Our Homes varies considerably by county. The extremes range from Hamilton County where the absence of Save Our Homes protection would increase taxable value by 5.7% to Brevard County where the similar figure equals nearly 37%. The statewide figure is 24.5%. This statistic can be viewed as a measure of the degree to which the tax roll is suppressed by Save Our Homes and lines up with the size of the differential. [See graphic depicting county-level data on the following page.]

According to the Department of Revenue, there are four major factors contributing to this wide range:

- 1) The tremendous variation in the mix of residential and non-residential property among counties. These extremes range from Glades County where just 9.2% of the just value is comprised of residential property to Palm Beach County where the similar figure equals 77.9%. The statewide statistic is 67.1%. When the ratio of residential to non-residential property is higher, the percentage reduction to the roll due to Save Our Homes is greater.
- 2) The wide variation in the portion of residential property that is homestead property. These extremes range from Walton County where 25.9% of the residential just value is comprised of homestead property to Baker County where the similar figure equals 85.7%. The statewide statistic is 63.8%. When the ratio of homestead property to residential property is higher, the percentage reduction to the roll due to Save Our Homes is greater.
- 3) The ratio of tax preferences for non-residential property to the total amount of non-residential property is higher in some areas than others. This is caused by differences in non-homestead related tax preferences such as classified use agricultural assessments, exempt and immune government property, and exempt institutional (churches, schools, charitable, etc.) property. Higher levels of non-homestead exemptions reduce the relative size of non-residential taxable value, which makes the Save Our Homes impact greater as a percentage of taxable value.
- 4) The impact of the Save Our Homes differential relative to homestead just value. These extremes range from Jackson County where the differential comprises 14.7% of the homestead just value to Monroe County where the similar figure equals 51.8%. The statewide statistic is 38.7%. Most of this variation is caused by differences in property growth rates and homestead turnover rates. When the ratio of the Save Our Homes differential is higher, the percentage reduction to the roll due to Save Our Homes is greater.

While the exact impact of the Save Our Homes differential is a function of the above factors and unique to each county, the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida.

## 2006 Taxable Value: With and Without Save Our Homes



The uneven geographic distribution of the Save Our Homes impact means that the tax shifting discussed in the previous section will also vary by county, with some counties experiencing a greater shifting of the burden and others less. Generally, the greater the differential within a particular county, the more tax shifting there will be.

**Findings from This Section...**

- *The impact of Save Our Homes varies considerably by county; however, the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida. Because larger differentials lead to greater tax shifting, non-residential and non-homestead residential property owners in those counties have increased tax burdens.*

**Discussion of the Principles...**

- A. Equity – Not related to this finding.
- B. Compliance – Not related to this finding.
- C. Pro-competitiveness – To the extent that the tax burden has been shifted to non-residential properties, Florida businesses may be at a disadvantage with respect to interstate and international competition. In this regard, savings and investment in physical plants, equipment, people, and technology in this state may have been suppressed or relocated to other areas – both within and outside of the state.
- D. Neutrality – Save Our Homes has likely increased government involvement in private investment decisions, by shifting the relative tax burdens.
- E. Stability – Not related to this finding.

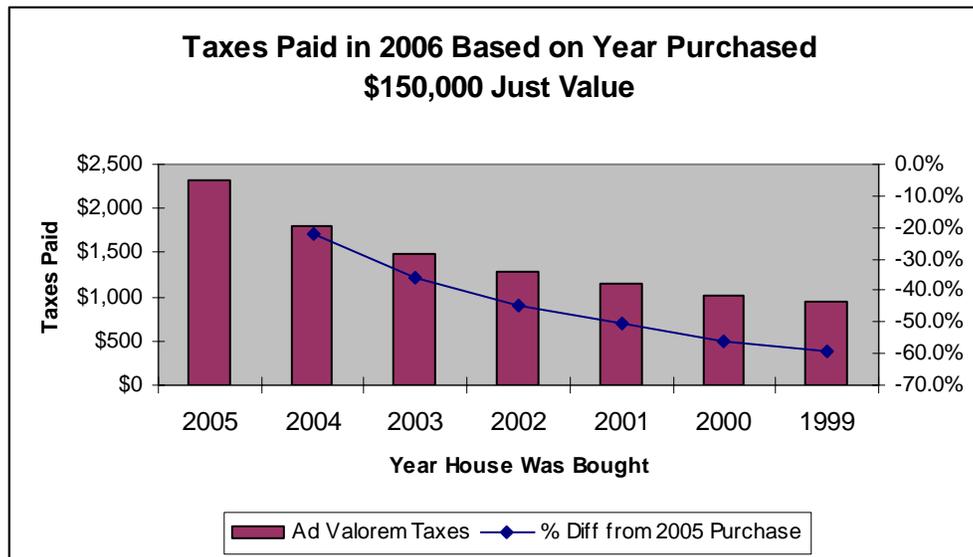
## *Effect of Save Our Homes on Affordable Housing*

The Department of Revenue property tax data does not lend itself to an in-depth review of the affordable housing situation in Florida, mainly because the multi-family data does not have sufficient specificity and because so many other variables come into play for an analysis of this type. [See the section entitled *Additional Areas of Study: Request for Proposal* in this report.] However, their data does allow limited examination of the differential tax burden on first-time homebuyers.

The department looked at differences in the assessed value of homesteads based on the purchase date of the homestead, using the statewide median just value of homestead property (\$150,000) in 2006. Specifically, they selected all homes that had a just value of \$150,000 in 2006, but were purchased in the years 1999 through 2005. The results show what these homes – differing only in purchase date – would pay in property taxes in 2006. Clearly, the tax savings is greater if the (similar) house has been owned for a longer period of time. If the house was bought in 1999, the property tax savings would be nearly 60%.

### **Save Our Homes Effect on Property Taxes Taxes Paid in 2006 Based on Year Purchased**

Bought in:	Just Value	SOH Differential	Assessed Value	HX	Taxable Value	Millage Rate	Ad Valorem Taxes	% Diff from 2005 Purchase	Monthly Taxes
2005	\$150,000		\$150,000	\$25,000	\$125,000	18.47	\$2,309		\$192
2004	\$150,000	\$27,281	\$122,719	\$25,000	\$97,719	18.47	\$1,805	-21.8%	\$150
2003	\$150,000	\$44,643	\$105,357	\$25,000	\$80,357	18.47	\$1,484	-35.7%	\$124
2002	\$150,000	\$55,594	\$94,406	\$25,000	\$69,406	18.47	\$1,282	-44.5%	\$107
2001	\$150,000	\$63,236	\$86,764	\$25,000	\$61,764	18.47	\$1,141	-50.6%	\$95
2000	\$150,000	\$70,087	\$79,913	\$25,000	\$54,913	18.47	\$1,014	-56.1%	\$85
1999	\$150,000	\$73,712	\$76,288	\$25,000	\$51,288	18.47	\$947	-59.0%	\$79



In terms of affordability, this differential treatment has a detectable impact. According to the Department of Revenue, if the 2005 purchaser could pay taxes equivalent to those paid by the 1999 purchaser, the difference in taxes would translate into allowing the purchase of a house valued at approximately \$18,000 – or 12% – higher at the same total monthly payment.<sup>6</sup>

The department also looked at recently purchased homesteads with taxable value equal to the median for each county to compare their property taxes with and without Save Our Homes. Because new homebuyers have yet to generate financial protection from Save Our Homes (for them, just value equals assessed value), they face a heightened property tax burden under Save Our Homes. In this regard, the removal of the Save Our Homes assessment differential would clearly lower the property taxes for this class. As before, there is considerable variation among the counties as to the specific effect. The reduction in annual property taxes for these recently purchased, median-valued homes ranges from an \$11 savings in Calhoun and Hamilton counties to a \$710 savings in Broward County. For 2005, the average statewide savings for a recently, purchased median-valued home would be \$387.

On the other hand, looking at median-valued homesteads purchased prior to this time – those that have generated differentials – shows that they would face an average tax increase of \$561 in the absence of the Save Our Homes protection. Again, there is considerable variation among counties with Calhoun at \$43 and Monroe at \$1,683.

Therefore, from the simple data analysis available at this time, the overall effect of Save Our Homes on the affordability of housing is ambiguous and more research needs to be done before final conclusions are made.

### **Findings from This Section...**

- *A direct outcome of the Save Our Homes tax preference is that dissimilar tax burdens have been placed on homeowners in similar circumstances, based solely on length of ownership. This is a horizontal inequity.*
- *The dissimilar nature of the tax burden caused by Save Our Homes has an impact on the overall affordability of housing for individual buyers, but more research needs to be conducted prior to determining whether the increased burden is cost prohibitive to homebuyers and renters.*
- *The Save Our Homes protection has made it possible for homeowners on the margin to remain in their homes longer than they otherwise could have, but more research needs to be conducted on existing homeowners' ability-to-pay prior to determining the magnitude of this effect.*

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<sup>6</sup> Assuming a mortgage rate of 6.5%.

**Discussion of the Principles...**

- A. Equity – Because of Save Our Homes and other exemptions, the Florida tax system does not treat all individuals equitably. Dissimilar tax burdens have been created on people in similar circumstances based on length of ownership.
- B. Compliance – Not related to these findings.
- C. Pro-competitiveness – Not related to these findings.
- D. Neutrality – Not related to these findings.
- E. Stability – Not related to these findings.

## *Effect of Save Our Homes on School Property Taxes*

To analyze the impact of Save Our Homes on public school property taxes, the Department of Revenue asked the Department of Education to recalculate the 2006 FEFP required local effort (RLE) millage rates based on a tax roll minus the effect of the Save Our Homes differential. The statewide RLE millage rate for 2006 is 5.010 mills or about half of 1%. After the necessary adjustments for the level of prior year assessment and the 90% property tax maximum, the school district millage rates actually ranged from a low of 1.442 mills in Franklin County to a high of 5.178 in Highlands and Leon.

The effect of adding the Save Our Homes differential to taxable value resulted in a decrease in the RLE millage rate to 3.997 mills in order to generate the same amount of dollars statewide. Since the level of funding is held the same, the only effects are distributional in nature. Of note, in this current-year analysis, there is no independent effect from adjustments for the level of assessment. The only difference prior to the 90% adjustment relates to the relative burden between school districts, and these effects are noteworthy. As expected, the millage rate drops in each school district; however, it does not follow that the district will generate the same or a lesser amount of required local effort. As stated by the Department of Revenue, "Counties in which the elimination of the SOH assessment growth limitation results in a change in taxable value greater than the statewide average would experience an increase in required local effort dollars levied..." These changes are proportional to the amount of taxable value previously removed from the roll by the differential. That is, districts with large differentials were shielded from the full effect of the RLE requirements. In the absence of the Save Our Home protection, the required dollars for FEFP participation increase for them. On the other hand, counties with relatively small differentials need to generate fewer local dollars in the absence of Save Our Homes.

It is clear that the presence of the Save Our Homes assessment growth limitation has had a detectable impact on the distribution of the state-funded portion of the FEFP in Florida. While the total funding per student is not affected, the mix of local and state funding is altered between school districts. This in turn affects the local property tax burden. To the extent that the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida (as previously found), these areas have disproportionately benefited while the other areas have experienced higher school property taxes than they otherwise would have.

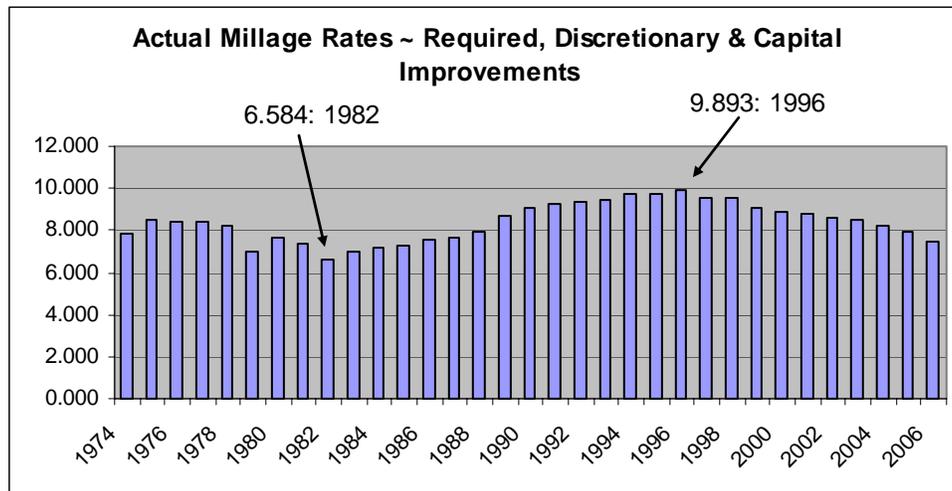
School funding in Florida has inherent regressive tendencies because of the law requiring that local property tax contributions to the FEFP be no more than 90% of each district's FEFP funding. So, to the extent that the property tax burden has shifted from the counties experiencing larger growth in just values to those with lesser growth, the regressive tendencies are further enhanced.

The ten districts that are impacted by the 90% adjustment are an exception to the above discussion.<sup>7</sup> They would experience virtually no difference in terms of local taxes collected with or without the benefit of the Save Our Homes protection. And, at least for 2006, the qualifying districts would be the same under either scenario.

Of the 57 districts that do experience a change in the absence of the Save Our Home protection, approximately \$135 million or 1.8% of the total required local effort has been impacted. As demonstrated by the simulation adding back the differential, nine districts would face larger tax burdens and 48 would experience reductions. The largest increase would affect Broward County (nearly \$48 million), and the largest decrease would affect Orange County (nearly \$32 million). [See listing of the impact by district on the page immediately following this section.]

While school districts with high differentials gain state dollars under the FEFP, they potentially lose local dollars under the unequalized portion of the nonvoted discretionary millage and under the additional 2 mills for capital improvements. For these districts, the value of 1 mill has been suppressed by the loss of taxable value, so they generate fewer dollars than they otherwise would from the discretionary millages. A full analysis of this offsetting effect is not possible from the Department of Revenue data and requires further research.

In 1996, the combined school millage rate of 9.893 mills for required, discretionary and capital improvement purposes neared the 10 mill constitutional cap. Today, the combined school millage rate is 7.46 mills. With just and taxable value growth expected to slow over the near-term, upward pressure on the millage rate is already likely. Proposals that further reduce taxable value will exacerbate this situation.



<sup>7</sup> These counties are: Charlotte, Collier, Franklin, Gulf, Indian River, Lee, Martin, Monroe, Sarasota, and Walton.

### **Findings from This Section...**

- *The presence of the Save Our Homes assessment growth limitation has had a detectable impact on the distribution of the state-funded portion of the FEFP in Florida. While the total funding per student is not affected, the mix of local and state funding is altered between school districts. This in turn affects the local property tax burden. Approximately \$135 million or 1.8% of the total required local effort has been impacted.*
- *To the extent that the greatest differentials have generally occurred in the coastal areas of central and south Florida, and the extreme edges of north Florida (as previously found), these areas have disproportionately benefited from the interaction of the FEFP with the Save Our Homes protection, while the other areas have experienced higher school property taxes than they otherwise would have.*

### **Discussion of the Principles...**

- A. Equity – To the extent that the property tax burden has shifted from the counties experiencing larger growth in just values to those with lesser growth, the regressive tendencies within the FEFP are further enhanced.
- B. Compliance – Not related to these findings.
- C. Pro-competitiveness – To the extent that the tax burden has been shifted to non-residential properties, Florida businesses may be at a disadvantage with respect to interstate and international competition. In this regard, savings and investment in physical plants, equipment, people, and technology in this state may have been suppressed or relocated to other areas – both within and outside of the state.
- D. Neutrality – Save Our Homes has likely increased government involvement in private investment decisions, by shifting the relative tax burdens.
- E. Stability – Not related to these findings.

Save Our Homes Impact on FEFP 2006		
1	Alachua	\$ (3,858,348) -7.07%
2	Baker	\$ (186,327) -5.61%
3	Bay	\$ (6,568,557) -7.12%
4	Bradford	\$ (275,519) -7.30%
5	Brevard	\$ 17,312,624 9.36%
6	Broward	\$ 47,940,067 6.37%
7	Calhoun	\$ (197,503) -13.41%
8	Charlotte	\$ (1,282) 0.00%
9	Citrus	\$ (1,703,663) -3.07%
10	Clay	\$ (280,957) -0.65%
11	Collier	\$ 12,065 0.01%
12	Columbia	\$ (916,319) -8.38%
13	Miami-Dade	\$ 12,898,780 1.27%
14	DeSoto	\$ (442,302) -5.25%
15	Dixie	\$ (333,400) -12.20%
16	Duval	\$ (13,996,700) -5.74%
17	Escambia	\$ (1,940,221) -2.66%
18	Flagler	\$ (3,931,427) -7.49%
19	Franklin	\$ 3,572 0.06%
20	Gadsden	\$ (501,799) -8.39%
21	Gilchrist	\$ (167,855) -6.16%
22	Glades	\$ (356,616) -11.53%
23	Gulf	\$ (1,076) -0.01%
24	Hamilton	\$ (494,225) -15.55%
25	Hardee	\$ (1,135,181) -15.66%
26	Hendry	\$ (1,386,294) -10.17%
27	Hernando	\$ (842,461) -1.79%
28	Highlands	\$ (916,999) -3.19%
29	Hillsborough	\$ 718,132 0.19%
30	Holmes	\$ (258,220) -12.78%
31	Indian River	\$ (2,098) 0.00%
32	Jackson	\$ (923,144) -14.67%
33	Jefferson	\$ (288,192) -12.04%
34	Lafayette	\$ (56,041) -5.54%
35	Lake	\$ (7,059,121) -7.96%
36	Lee	\$ (21,754) -0.01%
37	Leon	\$ (4,047,705) -5.61%
38	Levy	\$ (365,153) -3.31%
39	Liberty	\$ (127,644) -10.49%
40	Madison	\$ (372,793) -12.16%
41	Manatee	\$ (3,652,945) -2.52%
42	Marion	\$ (4,014,811) -4.75%
43	Martin	\$ 1,433 0.00%
44	Monroe	\$ 938 0.00%
45	Nassau	\$ (2,679,873) -7.73%
46	Okaloosa	\$ (2,979,203) -3.37%
47	Okeechobee	\$ (966,845) -8.95%
48	Orange	\$ (31,780,504) -7.31%
49	Osceola	\$ (11,447,824) -10.91%
50	Palm Beach	\$ 26,278,698 3.37%
51	Pasco	\$ 807,693 0.67%
52	Pinellas	\$ 20,767,486 5.73%
53	Polk	\$ (8,067,518) -5.65%
54	Putnam	\$ (1,407,521) -7.45%
55	St. Johns	\$ (3,120,082) -2.95%
56	St. Lucie	\$ (4,654,612) -3.98%
57	Santa Rosa	\$ (1,093,080) -2.62%
58	Sarasota	\$ 13,941 0.01%
59	Seminole	\$ 3,180,537 2.24%
60	Sumter	\$ (1,718,473) -7.59%
61	Suwannee	\$ (273,713) -3.78%
62	Taylor	\$ (916,168) -17.33%
63	Union	\$ (102,888) -10.59%
64	Volusia	\$ 5,025,698 2.76%
65	Wakulla	\$ (500,477) -7.53%
66	Walton	\$ (8,094) -0.03%
67	Washington	\$ (747,860) -16.20%

## *Fiscal Impact of Save Our Homes Portability*

One of the most frequently mentioned proposed changes to the current property tax structure is the portability of any previously accumulated differential (that is, the amount of the reduced assessment related to the Save Our Homes protection) from a prior homestead to a new homestead. Most of the proposals require that the “ported” amount be subtracted from the new homestead’s just value to determine the new assessed value, with the caveat that the resulting assessed value is at least equal to the previous homestead’s assessed value at the time of sale. However, many variations to the basic framework have been offered over the past two years.

The Revenue Estimating Conference worked closely with the Department of Revenue over the past summer to refine the methodology used for previous fiscal impact estimates of the portability proposals. A new assumption regarding the “turnover rate” was the most important adjustment. Clearly, a census-styled turnover rate equating to every seven or eight years is too broad since it reflects all types of moves, including those made by renters who are the most transient population. For the portability analysis, a more discrete measure is needed to capture just the percentage of homestead owners who move and directly buy another property in Florida which then becomes their homestead. Only this group of homeowners will be eligible for portability. In this regard, the “turnover rate” is more accurately a homestead transfer rate. Based on actual data, the annual homestead transfer rate is about 3.35% of all homesteads. This represents roughly 140,000 homes per year.

Of particular interest, the Department of Revenue noted but did not comment on the fact that the number of homes purchased within a given year has been dropping since 2003. In theory, this may lend support to the existence of a lock-in effect where homeowners feel compelled to stay in their existing homes – at least longer than they otherwise would have – because of the tax advantages. Currently, the portability analysis does not address this effect. Undoubtedly, more research in this area is needed.

Other research focused on whether the homestead-to-homestead class upsized or downsized in the transfer. Based on the data, roughly 3 out of 4 owners of homesteaded property purchasing a new homestead buy a more expensive one. The differential available for porting is only slightly lower for those downsizing.

Running the data through the estimating model produces the results displayed on the following page for full portability.<sup>8</sup> Full portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$13.6 billion in the first year. This reduction in taxable value would grow to \$65.0 billion in the fifth year. At the 2005

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<sup>8</sup> “Full” portability has no limitation on the resulting assessed value.

average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues ranging from \$267 million in 2008 to \$1.3 billion in 2012, if millage rates were held constant.

	Reduction in Taxable Value	Tax Impact at 19.6 mills
<b>2008</b>	\$ (13,603,219,767)	(266,623,107.43)
<b>2009</b>	\$ (26,812,389,308)	(525,522,830.44)
<b>2010</b>	\$ (39,852,551,744)	(781,110,014.17)
<b>2011</b>	\$ (52,408,088,113)	(1,027,198,527.01)
<b>2012</b>	\$ (65,001,494,478)	(1,274,029,291.77)

	Total Taxable Value REC – Nov. 2006	Official REC Growth Rates	Change as % of Tax Base
<b>2007</b>	\$ 1,795,449,000,000	9.2%	
<b>2008</b>	\$ 1,936,479,000,000	7.9%	-0.7%
<b>2009</b>	\$ 2,098,129,000,000	8.3%	-1.3%
<b>2010</b>	\$ 2,280,667,000,000	8.7%	-1.7%
<b>2011</b>	\$ 2,488,898,000,000	9.1%	-2.1%
<b>2012</b>	\$ 2,729,348,000,000	9.7%	-2.4%

In operation, portability is merely an extension of Save Our Homes. Because the differential can be transferred from one home to another, portability has the practical effect of intensifying all of the previous findings related to Save Our Homes. Both the magnitude and duration of the effects are increased.

From an economic perspective, portability also changes the nature of the tax. Today, everything centers on a specific piece of property, and its interaction with certain characteristics of the owner. With the introduction of portability, the tax preference is completely divorced from the property and travels with the owner to another location. This feature has economic implications that need to be further researched.

### **Findings from This Section...**

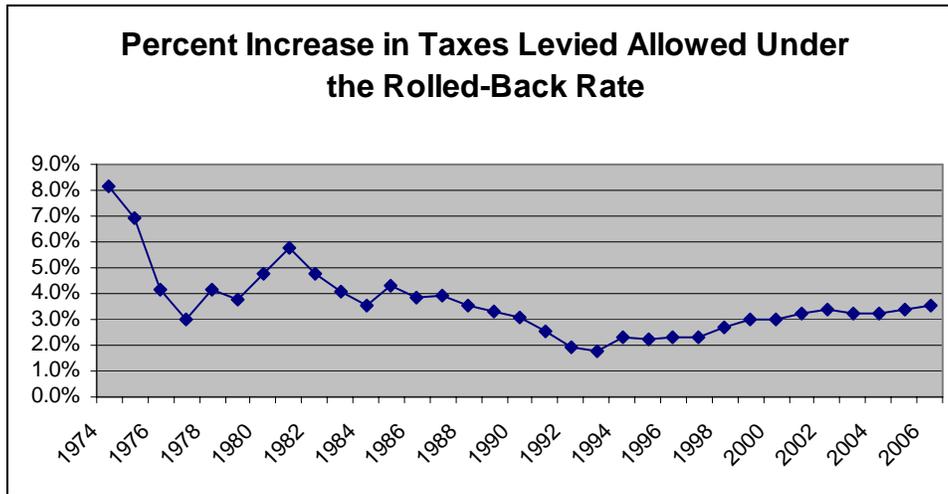
- *Adoption of portability will further reduce tax rolls below the levels they would otherwise have attained.*
- *Full portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$13.6 billion in the first year. This reduction in taxable value would grow to \$65.0 billion in the fifth year. At the 2005 average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues ranging from \$267 million in 2008 to \$1.3 billion in 2012, if millage rates were held constant.*
- *In operation, portability is merely an extension of Save Our Homes. Because the differential can be transferred from one home to another, portability has the practical effect of intensifying all of the previous findings related to Save Our Homes. Both the magnitude and duration of the effects are increased.*

### **Discussion of the Principles...**

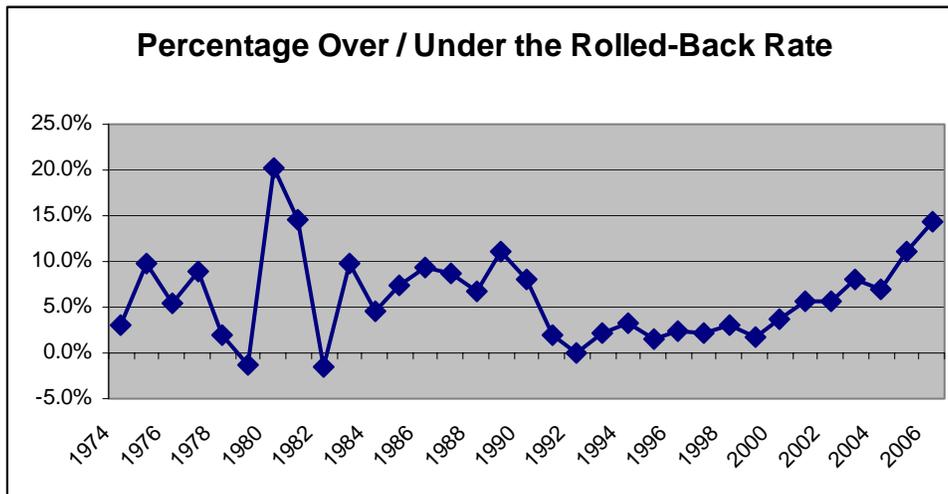
- A. Equity – Portability will further shift the tax burden onto non-homestead residential and non-residential property, increasing the regressivity of the tax system for residential renters of lower incomes. The tax burdens created on people in similar circumstances will be made even more dissimilar because the length of ownership will be extended through the transfer of the differential. Tax shifting issues unique to the FEFP will also be heightened.
- B. Compliance – Not related to these findings.
- C. Pro-competitiveness – To the extent that the tax burden is further shifted to non-residential properties, Florida businesses may be at a disadvantage with respect to interstate and international competition. In this regard, savings and investment in physical plants, equipment, people, and technology in this state could be suppressed or relocated to other areas – both within and outside of the state.
- D. Neutrality – Portability will likely increase government involvement in private investment decisions, by shifting the relative tax burdens.
- E. Stability – Not related to these findings.

## *Comparison of the Millage Rate to the Rolled-Back Rate*

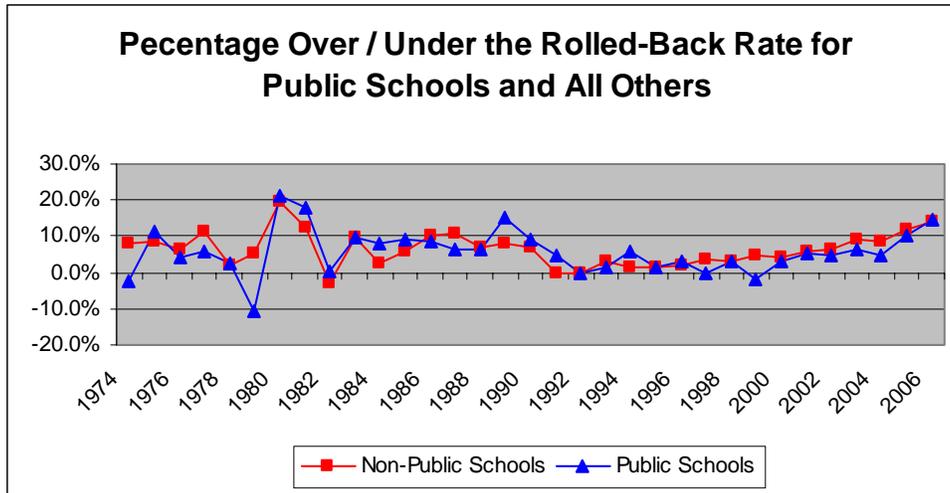
As discussed previously, a local government levying the rolled-back rate should raise revenues approximately equal to the previous year's revenues plus a percentage increase equal to the percent of new construction on the current year roll. The percentage increase for new construction is deliberately outside the rolled-back rate definition because it is intended to be an allowance for growth; as such, it does not need to be advertised as a tax increase under the TRIM process. Statewide, this allowance has ranged from 8.1% in 1974 to 1.8% in 1993.



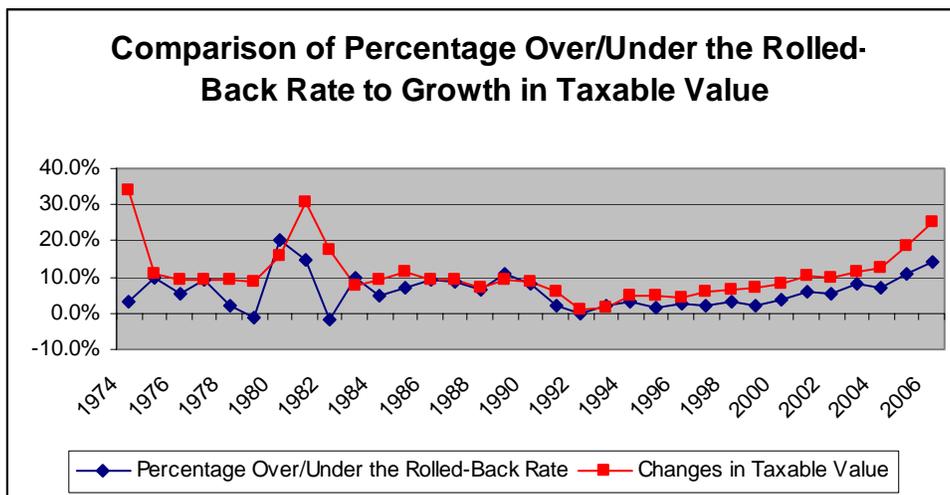
According to the Department of Revenue, for the 33 year period from 1974 to 2006, Florida taxing districts as a whole levied below the rolled-back rate in three years, and those were related to identifiable external events. The rest of the years have been above the rolled-back rate.



For the entire period, local taxing jurisdictions levied millages that were an average of 6.1% above the rolled-back rate. For public school levies, this average was 5.8%, and for all other taxing jurisdictions, 6.4%.



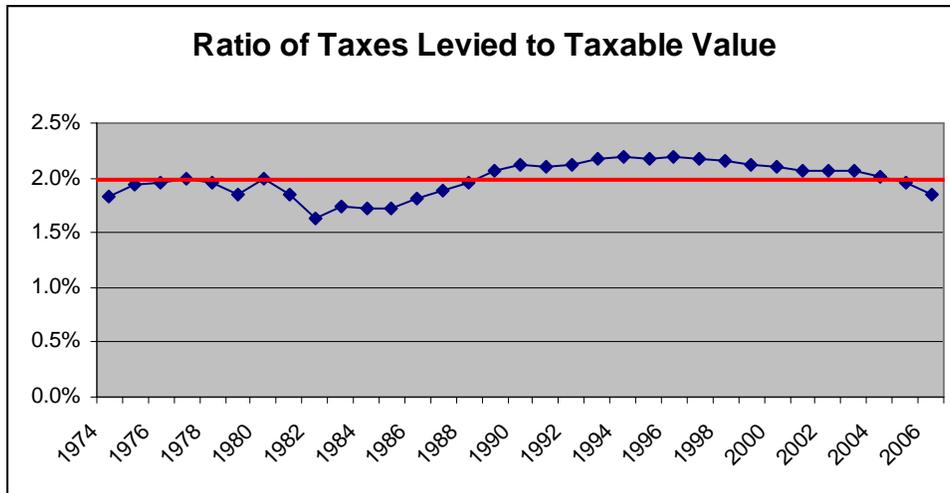
The recent increase in the “percentage over the rolled-back rate” clearly begins in 2001 and runs through today. This period of time conforms to Florida’s housing boom, which came with double-digit price appreciation and resulting increases in just values. As discussed previously, taxable values also increased during this period of time, although moderately less than the just value due to the existence of the Save Our Homes protection. To the extent that homesteaded properties were protected by Save Our Homes, the tax increases fell disproportionately on non-homesteaded properties.



By design, rate increases above the rolled-back rate are tax increases. The Department of Revenue data cannot answer the question of whether those increases are actually justified or reasonable. This answer involves an analysis of how the increased revenues are being used – a topic which is outside the scope of the interim report. In the absence of this analysis, it is only possible to make a few observations about tax burdens. To the extent

that the burden merely represents the cost of public goods and services to the taxpayer, the tax increases necessarily mean that the tax burden has increased for many Floridians. However, attempts to translate this statement directly into a discussion of individual affordability and ability-to-pay should be viewed with some caution. While the dollar value of the tax burden may have increased for many Floridians, the tax shifting caused by the Save Our Homes protection leads the increases to produce dissimilar results for individual taxpayers. One property appraiser has calculated that in 2004-05, 73% of additional revenue raised by local taxes in his county came from non-homestead property, 22% came from new homestead property, and only 5% came from existing homestead property.

Moreover, the percentage that burden represented of taxable value has not appreciably increased. Looking at the ratio of taxes levied to taxable value (another view of the millage rate) from 1974 to 2006, the movement stayed within a fairly narrow band running from a low of 1.6% in 1982 to a high of 2.2% during the period 1993 through 1998. Of note, the last three years (2004, 2005 and 2006) have actually seen percentages at or below the average level for the entire period, with a downward drift beginning in 1999.



This means that property tax increases essentially rode the growth in just values and increasing real estate wealth. In fact, the wealth effect arising from the housing boom has been studied by many economists, with the general conclusion that the recent home price appreciation (coupled with low interest rates) led to increased personal consumption and expenditures in excess of direct income (the negative savings rate) as people felt more wealthy.

Similarly, measures that simply look at the growth of personal income in Florida relative to the growth in property taxes over the last few years are suspect. First, Florida personal income does not fully capture housing wealth unless that wealth is derived from rental income. Second, Florida residents do not bear 100% of the property tax burden. To the extent that a not insignificant portion of the total tax levy is exported, the actual burden is

less. Further, Florida personal income does not capture the income from out-of-state buyers of second homes. While the exact level of second homeownership in Florida is currently unknown, this market has the potential to be significant, particularly given Florida's recent level of real estate activity.

Finally, it would appear a logical outcome for taxpayers to vote out of office any local elected officials that unreasonably raised their local tax burdens. According to the median voter hypothesis, the fact that this has not significantly occurred would indicate that local taxpayers are relatively satisfied with the way things are going. However, another explanation may lie in the shifting tax burden brought about by Save Our Homes. The median voter hypothesis indicates that the will of the median voter prevails. The median voter is defined as the householder or homesteader who has the median income. Because homesteaders form the class protected by Save Our Homes and their assessment growth is limited, there is no real incentive for them to pay attention to local property tax increases that largely land on others. To a great extent, they are shielded from the full cost of local services, leading to a tendency to over-demand them relative to what they would desire if paying the full price.

More research on all of these topics is needed before the net tax burden on Floridians can be meaningfully assessed.

### **Findings from This Section...**

- *According to the Department of Revenue, for the 33 year period from 1974 to 2006, Florida taxing districts as a whole levied below the rolled-back rate in three years, and those were related to identifiable external events. For the entire period, local taxing jurisdictions levied millages that were an average of 6.1% above the rolled-back rate. For public school levies, this average was 5.8%, and for all other taxing jurisdictions, 6.4%. To the extent that homesteaded properties were protected by Save Our Homes, the tax increases fell disproportionately on non-homesteaded properties.*
- *While the dollar value of the property tax burden may have increased for many Floridians, this does not translate directly into statements regarding individual affordability and ability-to-pay. Homesteaders are shielded from the full impact of tax increases at the expense of non-homesteaders.*
- *The impact of Save Our Homes on net property tax burdens is difficult to assess without additional study. Personal wealth as reflected in higher just values is not fully captured by measures of personal income, and tax exportation to other states and the federal government is rarely taken into account.*
- *Because Save Our Homes has shielded homesteaded property owners from the full effect of tax increases, the visibility and awareness of the taxes being paid has been reduced, potentially leading to an over-demand of services.*

**Discussion of the Principles...**

- A. Equity – Tax increases further shift the tax burden onto non-homestead residential and non-residential property, increasing the regressivity of the tax system for residential renters of lower incomes.
- B. Compliance – Because Save Our Homes has shielded homesteaded property owners from the full effect of tax increases, the visibility and awareness of the taxes being paid has been reduced, potentially leading to an over-demand of services.
- C. Pro-competitiveness – To the extent that the tax burden is further shifted to non-residential properties, Florida businesses may be at a disadvantage with respect to interstate and international competition. In this regard, savings and investment in physical plants, equipment, people, and technology in this state may be suppressed or relocated to other areas – both within and outside of the state.
- D. Neutrality – Higher taxes likely increase government involvement in private investment decisions, by shifting the relative tax burdens.
- E. Stability – Not related to these findings.

## ***Past Legislative Proposals Regarding Property Taxes***

During the 2005 and 2006 legislative sessions, numerous proposals were filed to make changes to the Save Our Homes assessment limitation. While many of these proposals originally stood alone to address specific problems, recent discussions have focused more on combining two or more of the proposals to achieve greater equity across the property tax system. The proposed changes generally take one of five forms, but all have variants.

### ***I. Portability***

Generally, the amount being “ported” is equivalent to the differential from the prior homestead. That dollar value is then subtracted from the new homestead’s just value to determine the new assessed value. Most of the proposals require that – after the calculation – the new property’s assessed value not be less than the previous homestead’s assessed value at the time of sale. Further, most of the proposals contemplate that the differential can be ported anywhere in the state (i.e. across taxing districts’ geographic boundaries). However, several significant variants to this basic scheme have been suggested:

1. Only available within qualifying counties (local option: referendum or super majority vote of governing body)
2. Capped amount (income-based)
3. Capped amount (either a dollar ceiling or a specified percentage of the prior differential)
4. Age-limited (senior citizens)
5. Directional limit (upsized or downsized only)
6. One-time availability
7. Alternative definitions of portability, the most common of which uses the sales price minus the prior homestead’s assessed value, the dollar value of which is then subtracted from the purchase price of the new home to determine the new assessed level

### ***II. Modification of the Existing Save Our Homes Provision***

Most of these have been proposed in conjunction with some form of portability or other homestead exemption change.

1. Limit the differential to a certain dollar value or percentage of just value
2. Limit the duration of the assessment limitation
3. Treat various classes of homeowners differently (for example, first time homeowners receive additional breaks)
4. Freeze homestead assessments after a specified period of time, either for all homeowners or for certain classes of homeowners (based on age, income, etc.)

### ***III. Increase in the Current Homestead Exemption***

This can be in conjunction with portability or another proposal. Some variants index the exemption so that it automatically grows.

#### ***IV. Extension of Assessment Limitations to Non-Homesteaded Properties***

Some proposals replace Save Our Homes with an assessment limit (usually in the form of a growth rate) that is applied to all properties. Others retain the Save Our Homes provision, but make it available to all properties. A variant has assessment limitations for all properties, but differing rates between homesteads and all other properties.

#### ***V. Elimination of Save Our Homes***

The underlying concept assumes that existing beneficiaries are not “grandfathered in” during a total replacement by some other mechanism such as an income-based circuit breaker. Variants have a grandfather provision.

The Governor’s Property Tax Reform Committee identified a list of proposed changes for further study, only some of which mirror the items above. Many of these stand alone and could not be implemented in conjunction with the others. They include in no particular order:

1. Assess business property based on current use only, instead of “highest and best use” value.
2. Cap tax revenue growth for individual local governments.
3. Cap tax growth for individual properties.
4. Full or partial replacement of the property tax with other forms of taxation.
5. Assess properties using a moving average value of several years’ assessments.
6. Simplify the “Truth in Millage” notice to be more easily understood by taxpayers (improving budgetary discipline from taxpayers).
7. Increase the homestead exemption.
8. Save Our Homes Portability.
9. Phase-out of the Save Our Homes tax preference.
10. Partial-year assessment of improvements to real property.

For recommendations made by property appraisers, tax collectors and local government officials, see the section entitled Summary Survey Results.

## *Hellerstein Legal Analysis*

The Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The intent behind this analysis was to identify the potential legal hurdles facing the different proposals, allowing proactive steps to protect the state's best interests.

The report focused primarily on the federal constitutional issues raised by the proposed alternatives to the Save Our Homes amendment, which limits property tax assessment increases on homestead property. It also considers the federal constitutional implications of proposed alternatives to the homestead exemption, remedial questions, and a number of related issues (including the implications of the analysis for the existing Save Our Homes provision). By way of background to the federal constitutional analysis of the proposed alternatives to Florida's homestead provisions, the report provides an overview of Florida's ad valorem property tax system as it relates to these provisions and a brief survey of similar property tax limitations in other states.

The table on the next page was developed by EDR to summarize the results of the legal analysis. The complete analysis, including a ten-page Executive Summary, is attached as Appendix B.

The key findings are displayed below.

- 1. While most of the proposed alternatives to the current property tax structure in Florida present no significant federal constitutional issues, portability may provide opportunities for legal challenge based on the Commerce Clause, the "Interstate" Privileges and Immunities Clause, and the Right to Travel.*
- 2. The extension of assessment limitations to non-homesteaded properties may generate Commerce Clause objections, but their strength is currently untested.*
- 3. If any of the proposed alternatives is adopted and later held to be unconstitutional, the discrimination or burden would have to be eliminated on a prospective basis and remedied through meaningful backward-looking relief on a retrospective basis. Meaningful backward-looking relief for a discriminatory tax may entail either a refund or any other remedy that cures the discrimination, e.g., taxing the previously favored class on a retroactive basis.*

<b>PROPOSAL</b>	<b>SIGNIFICANT CONSTITUTIONAL ISSUES (Legal Basis for Challenge)</b>				<b>DESCRIPTION &amp; SPECIAL ISSUES</b>
	<b>Equal Protection Clause</b>	<b>Commerce Clause</b>	<b>“Interstate” Privileges and Immunities Clause</b>	<b>Right to Travel</b>	
<i>Elimination of Save Our Homes (effect on current beneficiaries)</i>	None	None	None	None	Grandfathering that continues the current provisions for a select group would have greater vulnerability than a grandfather coupled with a freeze.
<i>Extension of Assessment Limitations to Non-Homesteaded Properties</i>	None	Unclear	None	None	U.S. Supreme Court granted certiorari in R.H. Macy case which addressed this issue, but taxpayer withdrew its petition.
<i>Increase in the Current Homestead Exemption</i>	None	None	None	None	
<i>Modification of the Existing Save Our Homes Provision</i>	None	None	None	None	
<i>Portability</i>	None	<b>EXIST<sup>1</sup></b>	<b>EXIST, BUT WEAK<sup>2</sup></b>	<b>EXIST, AND STRONG<sup>3</sup></b>	<p>1. Portability discriminates against interstate commerce (burden is of greater magnitude than SOH).</p> <p>2. Portability discriminates because only benefits residents (same as SOH).</p> <p>3. Portability deprives newly arrived residents of the right to be treated equally in their new State of residence (greater magnitude).</p>

## ***Summary Survey Results***

During the Summer and Fall of 2006, the Legislative Office of Economic and Demographic Research (EDR) conducted four surveys of the primary participants in Florida's property tax structure: property appraisers, tax collectors, school officials and representatives from local government. The purpose of the surveys was to elicit specific ideas and recommendations from persons on ground zero of the property tax structure – the frontline administrators and beneficiaries. To this end, many of the questions were open-ended and all comments were captured and grouped. Summary information is provided below and annotated surveys are contained in Appendix C.

### ***Background***

Separate survey questionnaires were developed in order to solicit responses from the four different groups. Each survey had a different due date and these dates were extended slightly for all four groups in order to allow for greater response. Completed surveys that were received by September 8, 2006 for county property appraisers, September 15, 2006 for county tax collectors, September 30, 2006 for School District Superintendents, and November 30, 2006 for local government officials were analyzed. Response rates for the four surveys were 47.7 percent, 32.8 percent, 92.5 percent, and 18.2 percent respectively.

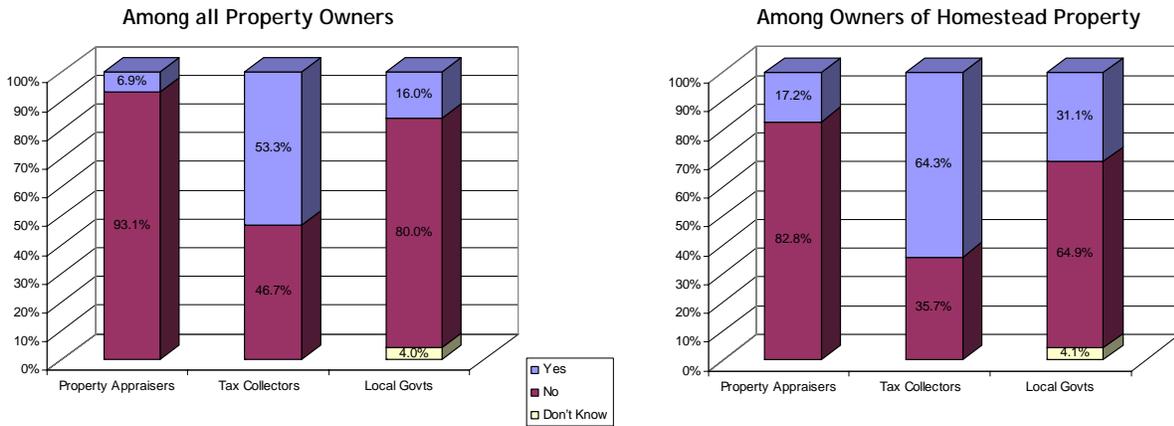
### ***Results***

The questions on the four questionnaires were customized based on the group being surveyed, with some questions appearing on multiple questionnaires. The rest of this section presents the results of the surveys and makes comparisons between similar questions across surveys. Where comparisons could be made, it appears that the responses from the local government officials and the county property appraisers were more similar than those from the county tax collectors. The local government officials' and school district superintendents' surveys included a "Don't Know" category, whereas the first two surveys did not, increasing the number that may have responded to a question. Detailed summary responses for all surveys can be found in Appendix C.

### ***Questions Relating to Equitableness of the Tax Burden***

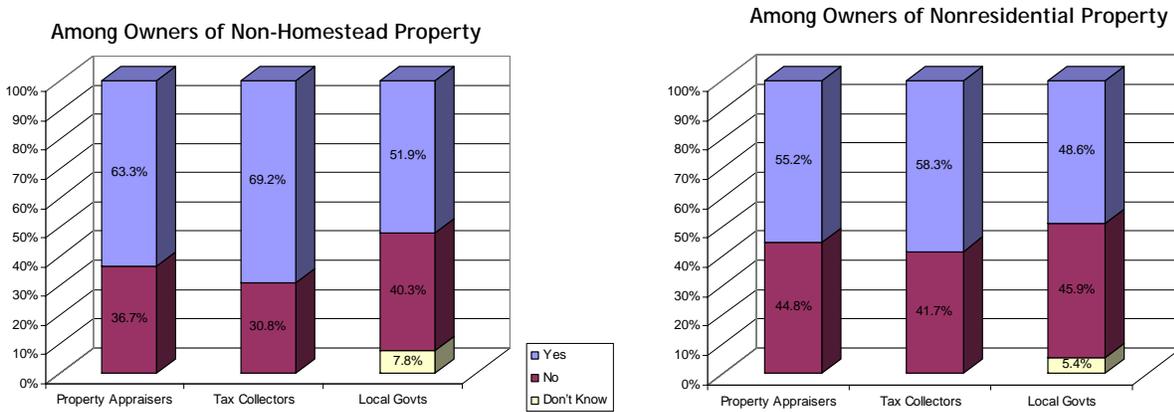
Both local government officials and the county property appraisers feel that the property tax burden is not shared equitably among all property owners or among owners of homestead property, whereas the tax collectors were evenly divided regarding all owners and thought that the burden was equitable for owners of homestead property (see Figure 1 below).

Figure 1  
Property Tax Burden in Florida is Shared Equitably:



The majority of respondents in the three groups (property appraisers, tax collectors, and local government officials) indicated that the property tax burden was shared equitably among non-homestead residential property owners and respondents were more evenly split when questioned about nonresidential property owners.

Figure 2  
Property Tax Burden in Florida is Shared Equitably:



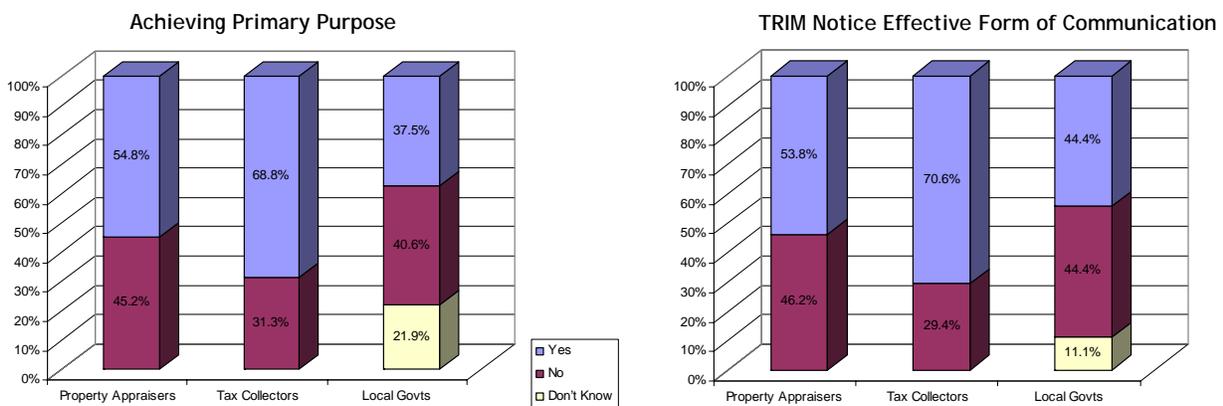
The survey questionnaires allowed respondents to explain their responses. Most of the comments regarding whether the property tax burden is shared equitably pointed to “Save Our Homes” or the class of all exemptions as the cause of the inequities. Over a quarter of the local government officials recommended eliminating, capping or otherwise limiting the Save Our Homes protection as a solution.

**Questions Relating to TRIM**

Questions relating to Truth in Millage (TRIM) were also included on all surveys of county appraisers, county tax collectors, and local government officials. The respondents

were asked to explain the primary purpose of the TRIM process. The responses were varied and wide-ranging indicating that there is no consistent vision of the primary purpose of TRIM in Florida. When asked if TRIM was achieving its purpose, only the tax collectors strongly indicated that it was. About 55 percent of the property appraisers said that TRIM was achieving its purpose, compared to almost 69 percent of the tax collectors. Also, just over 70 percent of the tax collectors indicated that the TRIM notice is effective in communicating to taxpayers relevant information concerning their property assessment, their proposed taxes, and the taxing authority’s proposed budget; while the property appraisers and local government officials were split.

Figure 3  
Truth in Millage (TRIM)



Comments on the TRIM notice indicated that the form is confusing, hard to understand and provides too much information. Also, some respondents indicated that the TRIM notice does not provide the right kind of information regarding taxes and budgets. Detailed suggestions on improvements to the TRIM notice in order to improve its effectiveness are listed in the appendix. These suggestions ranged from eliminating or simplifying the TRIM process, including the notice; adding other data to the form; revising the form, cover letter, and/or envelope; and changing the timing.

### ***County Property Appraisers***

The county property appraisers’ survey included questions in order to gain an understanding of their impression of Florida’s tax system, the impact that property taxes have on different types of buyers, and the impact of the “Save Our Homes” assessment differential. Virtually all of the county property appraisers agree that property taxes influence the decisions of residential property buyers in the state (61.3 percent – somewhat influence; 35.5 percent – greatly influence). And almost all believe that property taxes impact the decision to purchase second homes for use as vacation homes or rental properties.

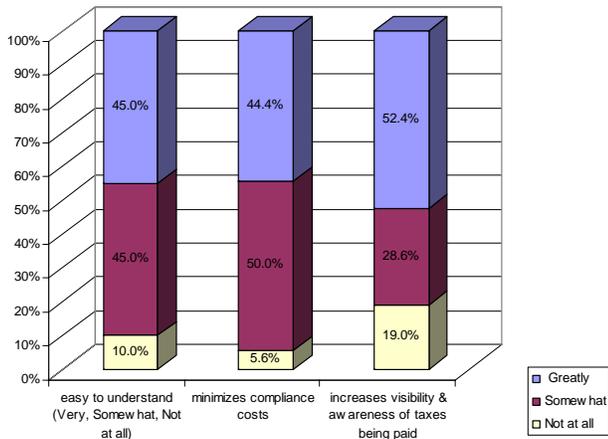
All respondents indicated that the “Save Our Homes” assessment differential significantly encourages an individual with homestead property to stay in their home rather than buy another home in the state. However, the majority do not believe that the Save Our Homes assessment differential significantly discourages an individual who does not own property from purchasing homestead property.

**County Tax Collectors**

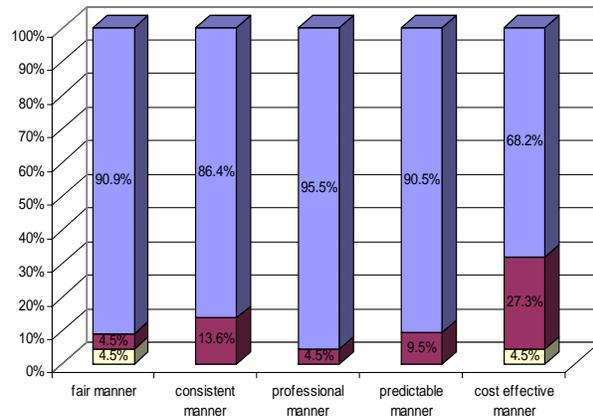
The county tax collectors’ survey had questions that were added in order to gain an understanding of their impression of Florida’s property tax system including information on the enforcement and collection of property tax revenues. All of the county tax collectors that responded to the survey indicated that the requirements of the Florida property tax system facilitated taxpayer compliance. Almost three-fourths felt that the requirements greatly facilitated compliance. Tax collectors were split on whether the system is very or somewhat easy to understand. Overall, they indicated that it minimizes compliance costs (44.4 percent – greatly and 50.0 percent – somewhat) and slightly over 52 percent indicated that the system increases the visibility and awareness of the taxes being paid. The degree to which they feel this is shown below in Figure 4.

County tax collectors felt that the enforcement and collection of property tax revenues is greatly accomplished in a fair, consistent, professional, predictable, and cost effective manner (see Figure 5 below). When asked, county tax collectors recommended only a few alternatives to the Florida property tax system as detailed in Appendix C.

**Figure 4**  
Property Tax System



**Figure 5**  
Accomplishment of Enforcement and Collection of Property Tax Revenues



**School District Superintendents**

The school district superintendents’ survey attempted to gather information on how the property tax system affected each district’s operations. In addition, this survey centered on whether school enrollment in 2005-06 and 2006-07 was/is lower than anticipated and the possible factors that may influence enrollment. The survey also asked

superintendents whether the lack of affordable housing has affected their district's ability to recruit and retain teachers.

Most (71 percent) of the respondents indicated that the property tax system as currently administered in Florida provides a stable and reliable revenue source for funding the school districts' operations. Respondents were split on the effect on the school district of the "Save Our Homes" assessment limitation, with the greatest percentage unsure (40.3 percent – indicated "Didn't Know").

School Districts were split with 45.2 percent indicating that their school enrollment was lower than anticipated and 53.2 percent indicating that their student enrollment was not lower than anticipated for the 2005-06 school year. For respondents that indicated that their school enrollment was lower than anticipated, affordable housing was cited as the primary factor. Over half (60.7 percent) indicated that the lower than anticipated student enrollment was either significantly or greatly impacted by fewer students moving into the county due to the lack of affordable housing. Also, 50 percent indicated that it was either significantly or greatly impacted by more students moving out of the county due to the lack of affordable housing.

For those superintendents or their representatives who indicated that their school enrollment was lower than anticipated for the 2005-06 school year, 75 percent indicated that they believed the reasons for lower anticipated enrollment will persist into the 2006-07 school year. For those who also indicated that affordable housing was either significantly or greatly affecting the lower enrollment, all indicated that high housing prices either significantly or greatly influenced affordable housing in their area. High insurance premiums were also a key factor (82.3 percent). High property taxes and low wages were next with slightly over 50 percent indicating that these factors significantly or greatly influenced affordable housing in the area.

Slightly over half of the superintendents or their representatives indicated that affordable housing affected their district's ability to recruit teachers. However, affordable housing has not had as much of an effect on the districts' ability to retain teachers, with 46.8 percent indicating that it has not had an effect, and 40.3 percent indicating that it has.

### ***Local Government Officials***

The local government officials' survey had questions that were added in order to gain an understanding of their impression of Florida's property tax system and how the property tax system is affecting their city or county. Most of the local government officials indicated that the property tax system as currently administered in Florida provides a stable and reliable revenue source for funding their city's or county's operations. Only 10 respondents indicated that there are changes to the property tax system that would make it a more stable and reliable revenue source. About 44 percent of the local government officials indicated that the requirements of the Florida property tax system greatly facilitate taxpayer compliance; while 32 percent indicated "Didn't know".

Almost 79 percent of the respondents indicated that the “Save Our Homes” assessment differential is affecting their cities or counties. Most local government officials indicated that property taxes influence decisions of residential property buyers in Florida (38.8 percent – greatly influence; 41.8 percent – somewhat influence). They also indicated that Florida’s property taxes have an impact on the purchase of second homes for use as vacation homes or rental property and that the “Save Our Homes” assessment differential significantly encourages individuals with homestead property to stay in their homes rather than buy another home in Florida.

### ***Recommendations***

Property appraisers, county tax collectors and local government officials were given an opportunity to identify alternatives and additional issues related to Florida’s property tax system that should be considered by the Legislature. The following list reflects the most common responses, roughly grouped by the number of times the recommendation was made:

- Eliminate or limit Save Our Homes.
- Abolish all or multiple exemptions, including Save Our Homes and Homestead.
- Eliminate altogether or greatly simplify the TRIM process and notice format to provide better explanations and clarity; change the calculation of the rolled-back rate or cease using it.
- Find an alternative revenue source to replace some or all property taxes.
- Cap the rate of growth on all properties or tie the assessed value to a percentage of the market value for all properties.
- Control or limit government spending or allowable millage rates.
- Allow full or limited portability.

## *Additional Areas of Study: Request for Proposal*

The legislation directing the Office of Economic and Demographic Research (EDR) to conduct an in-depth study of the property tax system also specified certain elements for particular review. These include an evaluation of the *Save Our Homes* impact on:

- Homeowners' willingness to purchase a new homestead.
- Local government budget decisions, including whether the TRIM notification process adequately informs taxpayers of local governments' tax and budget decisions.

In addition, EDR is to conduct an evaluation of the effectiveness of the TRIM process, focusing principally on the notice and identifying alternative methods of conveying the information.

The legislature included a \$500,000 appropriation for the overall analysis. In August, leadership from the House and Senate authorized EDR to release a Request for Proposal (RFP) for services related to the study. State universities and nationally recognized property appraisal education and certification organizations were eligible to submit proposals specifying how they would supplement EDR's independent research into specific policy options to address the findings in this report. The RFP was released on August 24, 2006.

On October 5, 2006, proposals were received from the following entities:

- 1) International Association of Assessing Officers (IAAO)
- 2) Florida International University Board of Trustees
- 3) Florida Atlantic University Board of Trustees
- 4) University of Florida

After the evaluation was complete, the University of Florida won the award. They had put together a cross-university consortium with Florida State University consisting of the Shimberg Center for Affordable Housing (UF), the Bureau of Economic and Business Research (UF), Center for Real Estate Education and Research (FSU), Center for Real Estate Studies (UF), and the Pepper Institute on Aging and Public Policy (FSU). In all, eleven of the state's top researchers in this field will be spending significant portions of their time on the project. The principal investigators are:

- Dr. Wayne Archer, Professor of Real Estate and Co-Director of the Center for Real Estate Studies, University of Florida
- Dr. David Denslow, Professor of Economics and Senior Research Economist, Bureau of Economic and Business Research, University of Florida
- Dr. Jim Dewey, Director of Economic Analysis Program, Bureau of Economic and Business Research, University of Florida
- Dr. Dean Gatzlaff, Mark Bane Professor and Chair of the Department of Risk Management / Insurance, Real Estate and Business Law, Florida State University

- Dr. David Macpherson, Brim Eminent Scholar in Economics and Director of the Pepper Institute on Aging and Public Policy, Florida State University
- Dr. Stefan Norrbin, Professor of Economics, Florida State University
- Dr. Don Schlagenhaut, Professor of Economics, Florida State University
- Dr. Stacy Sirmans, Kenneth Bachellor Professor of Real Estate and the Director of Research for the Center for Real Estate Education and Research, Florida State University
- Dr. Robert Stroh, Sr., Shimberg Professor of Affordable Housing and Director of the Shimberg Center for Affordable Housing, University of Florida
- Ms. Anne Williamson, Associate Director of the Shimberg Center for Affordable Housing, University of Florida
- Dr. Mike Scicchitano, Director of the Florida Survey Research Center, University of Florida

In addition to the specific items required by legislation, the consortium is addressing the following economic research issues:

- An evaluation of mobility, tenure and the lock-in effect.
- Consideration of the broader spectrum of affordable housing, including rental housing, mobile and manufactured housing, first-time buyers and other abodes for people of lower incomes.
- The effect of property taxes on people's ability-to-pay.
- An analysis of the behavioral response of the various proposals to the changing real estate market.
- An evaluation of the actual property tax burden on Floridians.
- The impact of the alternatives to Save Our Homes on all school property taxes.
- The impact of Save Our Homes and its alternatives on the budget decisions of local governments.
- Economic implications of portability on tax policy.
- An in-depth analysis of the TRIM process which includes 600 telephone surveys and follow-up focus groups.

The final deliverables are due from the consortium on June 30, 2007. They will then be incorporated into EDR's final report which will be released by the statutory deadline of September 1, 2007.

# **APPENDIX A**

Florida's Property Tax Structure: An Analysis of  
Save Our Homes and Truth in Millage  
Pursuant to Chapter 2006-311, L.O.F.

Florida Department of Revenue  
January 2, 2007

Revised January 18, 2007

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## **I. Introduction**

Florida's property tax structure is notable for a number of reasons. Florida has a strong market value standard. The constitution requires that all property be assessed at "just" value. This has been interpreted by the courts to mean "fair market" value, or "the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell." Adherence to this standard provides uniformity of assessments among taxpayers, uniformity across counties with regard to the value of exemptions, millage caps, and multi-county millage levies, and uniformity of public school funding millage levy requirements. Florida's constitution provides strict limits on the millage rates which local governments can levy. A maximum of 10 mills each can be levied for county purposes, school purposes and municipal purposes. In addition, there are constitutional limits on water management district levies and a requirement that special district levies be authorized by law and approved by the voters.

Florida's constitution, through the homestead exemption and the Save Our Homes assessment growth limitation, provides large tax preferences for owners of homestead property. In 2006, the value of these preferences equaled more than one-fifth of total just value in the state. Florida, through the Truth In Millage (TRIM) process, provides extensive information to taxpayers on assessments and local government millage levy decisions. This includes newspaper ads and personal notices of assessment, with emphasis on separating the role played by assessment increases and the role played by local government millage decisions in the final tax bill. Included in the personal notice is information on what taxes would be in the absence of budget changes from the previous year and the time and location of public hearings on proposed budgets and taxes.

This report has been prepared by the Department of Revenue in response to subsection (1) of section 3 of chapter 2006-311, Laws of Florida. The Legislature directed the Department of Revenue to conduct a study of Florida's property tax structure, specifically addressing the last two of the features noted above: the preferences provided to homestead property owners through the homestead exemption and the Save Our Homes assessment growth limitation and millages adopted by local governments through the TRIM process. The law requires that the Department's study include an analysis of the following:

- The effects of the Save Our Homes assessment growth limitation on the distribution of property taxes among and between homestead properties and other types of property;
- The effect of Save Our Homes on affordable housing as evidenced by the differential tax burden of first-time and long-term homestead property owners and on non-homestead residential property owners;
- The impact of Save Our Homes on each county;
- The effects of Save Our Homes on the distribution of school property taxes;
- The fiscal impacts of allowing the assessments under Save Our Homes to be transferred to newly acquired homes; and
- The millage rates adopted by local governments compared to the rolled-back rate as advertised in the TRIM notices.

The Department is required to prepare a draft of this study by November 15, 2006 and conclude the study by January 2, 2007.

**Homestead Exemption:** The homestead exemption was adopted in Florida pursuant to a 1934 constitutional amendment, first taking effect in 1935. The exemption is available to every person having legal or equitable title to real estate and maintaining thereon the permanent residence of the owner, or another legally or naturally dependent on the owner. Subsection 196.012(18), F.S., defines “permanent residence” as “the place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time...” The original homestead exemption amount was \$5,000. This remained in place until 1980 when voters approved a constitutional amendment raising the homestead exemption to \$25,000 for school property tax levies. That same year, voters approved a second amendment raising the homestead exemption for all other property tax levies to \$15,000 in 1980, \$20,000 in 1981, and \$25,000 in 1982 and thereafter. Since 1982, the homestead exemption amount has been \$25,000 for all property tax levies.

**Save Our Homes:** The Save Our Homes (SOH) assessment growth limitation was adopted pursuant to a citizen’s petition constitutional amendment approved by the voters in 1992. The assessment growth limitation first affected valuations on the 1995 tax roll. The Save Our Homes provisions apply only to homestead property. Under the amendment, the growth in the assessed value of homestead property cannot exceed the lower of 3% or the percentage change in the Consumer Price Index, with assessments never being able to exceed just value. Following are the homestead assessment growth percentage limits since 1995:

1995	2.7%
1996	2.5%
1997	3.0%
1998	1.7%
1999	1.6%
2000	2.7%
2001	3.0%
2002	1.6%
2003	2.4%
2004	1.9%
2005	3.0%
2006	3.0%

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. New homestead property must be assessed at just value as of January 1 of the year following establishment of the homestead, with the assessment growth limitation applying thereafter. There is no provision currently in the constitution that would allow the owner of a homestead to

apply an existing SOH assessment differential to a newly purchased homestead. The SOH provision protects a homesteaded property's taxable value from increasing in years with substantial increases in just value. However, in years where a homestead's just value is decreasing, or increasing at the rate less than allowed under the amendment, taxable value of a homesteaded property will increase by the lower of the change in CPI or 3%, as long as the resulting assessed value does not exceed just value.

**Truth In Millage (TRIM):** The Truth in Millage law was enacted in 1980, in large part as a response to taxpayer anger over rapidly increasing property values and taxes. The central concept of the law is to provide taxpayers with information to distinguish between the impact on their tax bill of increases in value as assessed by the property appraiser and increases in taxes due to increased budgets on the part of the taxing authorities. A personal notice is sent to each taxpayer prior to taxing authorities' preliminary budget hearings notifying the taxpayer of his or her assessment, previous year's taxes, current year proposed taxes, and taxes if the taxing authority did not increase its budget from the previous year. Taxes in the absence of a budget increase are calculated by multiplying the taxing authority's new taxable value by the "rolled-back" millage rate. This rate is calculated as the millage that would raise the same tax dollars that were levied in the previous year if levied against the current year's tax roll minus the value of new construction.

The difference between the proposed taxes and the "rolled-back" rate taxes is deemed to be the impact on the tax bill from a local government's tax and budget decision. Any difference between the prior year's taxes and the "rolled-back" rate taxes would be the effect of assessment changes. The time and place of the local government preliminary hearing is included on the notice. The TRIM law also provides for a newspaper notice containing similar information for the taxing authority as a whole to be published prior to the taxing authority's final tax and budget hearing.

**Just, Assessed and Taxable Value:** As stated earlier, the Florida Constitution requires all property in Florida to be assessed at just value. "Just value" has been interpreted by the courts to mean fair market value. The term "assessed value" is applied to a value equal to, or sometimes less than, just value and can be calculated on a basis other than market value. While the term is used for agricultural values calculated based on use value, as used in this report it refers to the value of homestead property as limited by the Save Our Homes assessment increase limitation. The term "Save Our Homes differential" means the difference between the just and assessed value of homestead property due to the assessment increase limitation. "Taxable value" is the value to which local government millage rates are applied. It is equal to assessed value (or just value if there is no difference between just and assessed value) minus the value of any exemptions.

**Florida Tax Roll Overview:** Table 1 presents historical tax roll information from 1974 to 2006 along with historical population and personal income growth rates. In looking at the growth in just and taxable value in columns (2) and (4), two distinct periods of rapid growth can be seen - the first in the early 1980's and the second during the last 6 years

Table 1  
Florida Tax Roll and Economic Data  
1974 - 2006

	Just Value (1)	% Increase (2)	Taxable Value (3)	% Increase (4)	County Homestead Exempt Value (5)	% Increase (6)	SOH Differential (7)	% Increase (8)	Florida Pers. Inc. Growth (9)	Florida Population Growth (10)	Index Taxable Value (11)	Index Personal Income (12)
1974	117,373,309,224	31.4%	81,262,609,759	34.0%	8,228,317,453	6.1%			15.1%	5.1%	100	100
1975	129,175,089,981	10.1%	90,123,837,311	10.9%	8,405,756,906	2.2%			9.2%	2.0%	110.9	109.2
1976	139,628,876,146	8.1%	98,472,436,732	9.3%	8,787,221,476	4.5%			9.3%	1.5%	121.2	119.4
1977	152,891,389,230	9.5%	107,774,941,095	9.4%	9,106,817,155	3.6%			10.0%	2.0%	132.6	131.3
1978	167,404,317,177	9.5%	117,654,233,056	9.2%	9,495,903,442	4.3%			15.0%	2.7%	144.8	151.0
1979	180,113,828,016	7.6%	127,558,180,383	8.4%	9,943,577,769	4.7%			15.2%	3.2%	157.0	173.9 A
1980	235,905,759,468	31.0%	148,001,921,409	16.0%	21,580,217,708	117.0%			17.1%	3.2%	182.1	203.7 B,C
1981	292,669,861,280	24.1%	193,294,996,578	30.6%	34,333,670,843	59.1%			17.8%	4.0%	237.9	239.9 D
1982	322,803,728,683	10.3%	226,613,433,780	17.2%	43,701,742,060	27.3%			11.7%	2.9%	278.9	268.0 E,F
1983	355,897,653,821	10.3%	243,493,977,991	7.4%	53,864,741,287	23.3%			8.6%	2.4%	299.6	291.1
1984	384,542,727,946	8.0%	266,127,205,941	9.3%	56,580,372,052	5.0%			11.2%	2.8%	327.5	323.7
1985	423,199,439,322	10.1%	296,038,391,464	11.2%	58,992,957,399	4.3%			12.1%	3.1%	364.3	362.9
1986	458,163,772,132	8.3%	322,911,815,982	9.1%	61,136,484,851	3.6%			8.2%	2.9%	397.4	392.6
1987	496,517,969,166	8.4%	352,410,756,034	9.1%	63,951,767,590	4.6%			7.3%	3.0%	433.7	421.3
1988	530,330,145,901	6.8%	378,120,253,152	7.3%	66,779,313,506	4.4%			9.9%	2.7%	465.3	463.0
1989	575,980,050,062	8.6%	413,319,481,553	9.3%	69,466,443,886	4.0%			11.1%	2.6%	508.6	514.4
1990	623,569,373,132	8.3%	449,090,832,444	8.7%	72,115,258,451	3.8%			8.5%	2.3%	552.6	558.1
1991	658,081,972,032	5.5%	475,097,131,780	5.8%	74,544,333,627	3.4%			5.4%	2.5%	584.6	588.2
1992	670,460,597,822	1.9%	479,972,405,943	1.0%	76,598,105,907	2.8%			3.8%	1.8%	590.6	610.6
1993	684,578,852,850	2.1%	488,623,956,960	1.8%	78,174,175,087	2.1%			6.4%	1.7%	601.3	649.7
1994	719,984,816,338	5.2%	511,827,537,933	4.7%	80,507,731,939	3.0%			4.0%	2.3%	629.8	675.7
1995	752,009,925,715	4.4%	535,608,626,220	4.6%	82,954,822,849	3.0%	3,506,404,838		7.4%	2.1%	659.1	725.7 G
1996	780,513,459,583	3.8%	559,202,016,807	4.4%	85,247,004,006	2.8%	5,942,848,108	69.5%	5.9%	2.0%	688.1	768.5
1997	824,068,916,552	5.6%	592,850,840,886	6.0%	87,489,801,506	2.6%	9,057,852,107	52.4%	6.4%	2.2%	729.5	817.7
1998	874,469,466,195	6.1%	630,754,819,381	6.4%	89,472,128,504	2.3%	14,131,913,869	56.0%	6.9%	2.0%	776.2	874.1
1999	934,442,402,587	6.9%	675,635,635,204	7.1%	91,861,162,486	2.7%	20,753,804,777	46.9%	7.0%	2.3%	831.4	935.3 H
2000	1,001,262,266,191	7.2%	729,705,531,194	8.0%	94,298,192,313	2.7%	27,815,434,639	34.0%	6.4%	2.6%	898.0	995.1
2001	1,107,670,867,946	10.6%	804,905,843,592	10.3%	96,835,098,783	2.7%	47,678,672,028	71.4%	6.7%	2.2%	990.5	1061.8
2002	1,232,792,158,331	11.3%	885,107,267,260	10.0%	99,511,935,935	2.8%	80,364,008,731	68.6%	3.6%	2.1%	1089.2	1100.0
2003	1,383,502,052,956	12.2%	985,299,937,144	11.3%	102,017,240,581	2.5%	117,909,700,853	46.7%	3.2%	2.4%	1212.5	1134.9
2004	1,577,207,641,539	14.0%	1,110,743,583,523	12.7%	104,574,484,137	2.5%	165,144,250,184	40.1%	5.0%	2.6%	1366.9	1191.6
2005	1,901,925,889,573	20.6%	1,315,193,484,802	18.4%	106,779,870,942	2.1%	246,314,750,296	49.2%	8.7%	2.3%	1618.4	1295.3
2006	2,440,954,132,063	28.3%	1,648,658,586,195	25.4%	108,514,244,974	1.6%	404,380,037,405	64.2%	5.9%	2.3%	2028.8	1371.7

A 1979 - Legislature reduced school required local effort to provide tax relief and to rebalance state and local funding shares.

B 1980 - TRIM legislation enacted. Homestead exemption for school taxes raised from \$5,000 to \$25,000. Homestead exemption for non-school taxes raised from \$5,000 to \$15,000.

C 1980 - Legislature imposed 8% cap on city, county and special district property tax increases. May be overridden by majority plus one vote of governing body.

D 1981 - Homestead exemption for non-school taxes raised from \$15,000 to \$20,000.

E 1982 - Legislature imposed cap on city and county millages due to increased sales tax revenue sharing. Cap, generally, equal to the rolled back rate minus dollars equal to expected revenue from sales tax.

F 1982 and thereafter - Homestead exemption for non-school taxes raised from \$20,000 to \$25,000

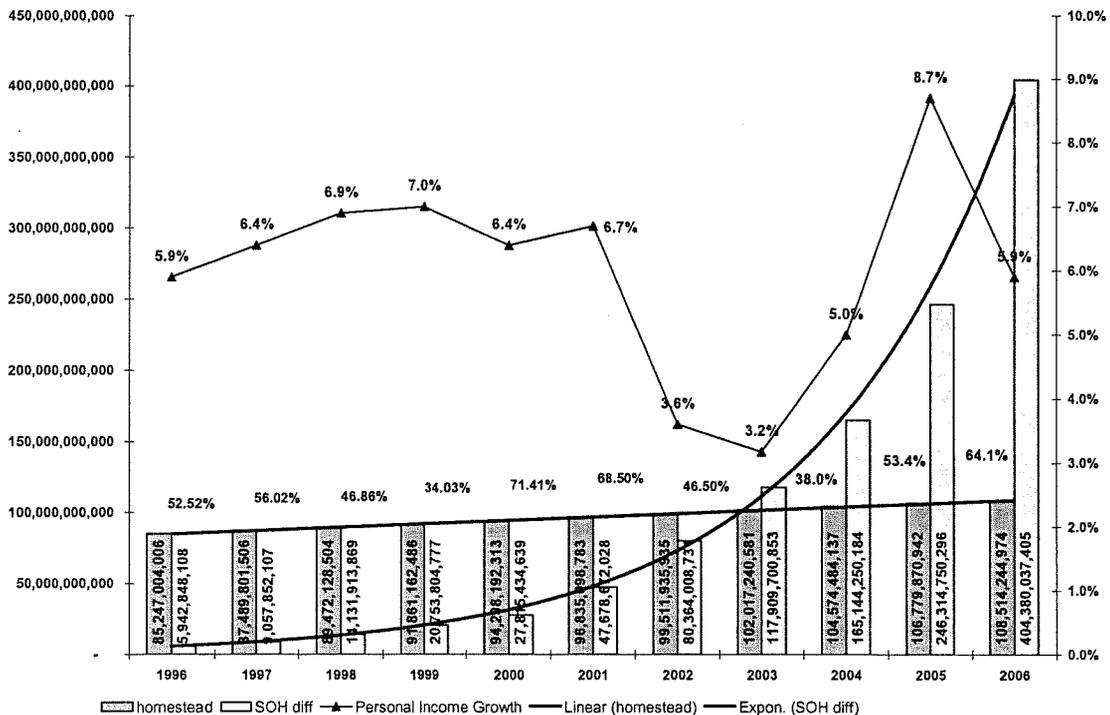
G 1995 - Save Our Homes constitutional amendment adopted in 1992 first impacts the tax roll.

H 1999 - Legislature adopts .42 mill reduction in the school required local effort to provide tax relief.

with growth rates in excess of 10%. The first of these growth periods was caused in part by rapid double-digit inflation and in part by the state's efforts to raise the overall level of assessment. It is interesting to note that during a slightly longer period covering these years, property values did not grow appreciably faster than Florida personal income, a general measure of Florida economic activity. As indicated by the indexes in columns (11) and (12), between 1974 and 1985 taxable value increased by 264.3% while Florida personal income increased by 262.9%. Even as late as 2002, these 1974-based indexes were approximately equal. The last few years, however, show a substantially different pattern. Since 2002, taxable value has increased 86.3% while Florida personal income has increased 24.7%.

The tremendous impact of the Save Our Homes assessment growth limitation can also be seen in Table 1. Since 1995, the average annual growth rate of the assessment differential has been 54.4% while the average increase in homestead exempt value has been just 2.5%. Chart 1 graphically displays this difference in growth rates along with recent growth rates of Florida personal income. This exponential growth in the SOH differential is not expected to continue. As turnover of homestead property occurs, larger and larger differential amounts are converted to taxable value at the time of sale. Within the next several years, increases in taxable value from this turnover should begin to balance increases in the differential due to property value growth.

Homestead Exemption & Save Our Homes



## II. The Distribution of Property Taxes Across Property Types

Over the past 32 years, the central trend in the distribution of property tax burden in Florida has been the shift in the proportionate share of just value away from non-residential property and toward residential property. In Table 2, residential property includes properties in the Department of Revenue classifications of single family, multi-family, mobile home, condominium, cooperative and retirement homes. Non-residential property includes all other property types, including vacant residential lots. As can be seen in columns (3) and (5), in 1974 non-residential property accounted for 61% of the total just value in the state while residential property accounted for 39%. By 2002, these proportions had reversed, and in 2006 non-residential property made up only one-third of the total just value in the state while residential property accounted for two-thirds.

This trend is also evident, though less pronounced, with regard to taxable value. In 1974, non-residential property accounted for 55% of Florida taxable value and residential property accounted for 45% (see Table 2, columns (12) and (14)). These 1974 proportions differ somewhat from the just value proportions. While the homestead exemption tended to reduce the proportion made up by residential property, this was more than counterbalanced by exemptions and classified use assessments within the non-residential category. These exemptions include government property and a large portion of institutional property (e.g., churches, hospitals, private schools, etc.), in addition to the assessment of agricultural property based on its use. The overall trend, however, is the same. Taxable value proportions in 2006 (coincidentally) equal the just value proportions of 33% non-residential and 67% residential.

Data on the value of homestead property has been available only since 1987. In that year, homestead property made up 30% of the total just value in the state while non-homestead residential property made up 20% (see Table 2, columns (7) and (9)). The total just value of homestead property has grown somewhat faster than non-homestead residential property, with homestead property making up 43% of the total just value of property in 2006 and non-homestead residential property making up 24%.

On the taxable value side, homestead property as a proportion of total taxable value grew from 25% in 1987 to 32% in 2006 (see Table 2, column (16)). As a proportion of residential property taxable value, however, homestead property accounted for an identical 48% in both years (see Table 5, column (9)). The equal residential value proportions in 1987 and 2006 hide the underlying trends in the intervening years. As can be seen in Table 5, columns (9) and (10), homestead taxable value as a percentage of residential value grew to a high of 57% in the late 1990s before beginning to decline due to the effects of the Save Our Homes amendment. It was not until 2005, however, that the SOH effects counterbalanced the effects of the long term shifts of value to residential property, and in particular homestead residential property, and resulted in a decline in homestead taxable value as a proportion of total taxable value: 35% in 2004 falling to 32% in 2006 (see Table 2, column (16)).

Table 2  
**Florida Just and Taxable Value - Residential and Non-Residential Property**  
**Percent of Total Just or Taxable Value**  
 1974 - 2006

	Just Value										Taxable Value							
	Non-Residential			Residential			Non-Residential				Residential							
	All Property Just Value \$ bil	Just Value \$ bil	% of Tot. JV	All Residential Just Value \$ bil	% of Tot. JV	Homestead Just Value \$ bil	% of Tot. JV	Non-Homestead Just Value \$ bil	% of Tot. JV	Taxable Value \$ bil	% of Tot. TV	All Residential Tax. Value \$ bil	% of Tot. TV	Homestead Tax. Value \$ bil	% of Tot. TV	Non-Homestead Tax. Value \$ bil	% of Tot. TV	
																		(1)
1974	117.4	71.7	61.1%	45.7	38.9%	na	na	na	81.3	44.5	54.8%	36.8	45.2%	na	na	na		
1975	129.2	76.4	59.1%	52.8	40.9%	na	na	na	90.1	47.5	52.7%	42.6	47.3%	na	na	na		
1976	139.6	79.7	57.1%	59.9	42.9%	na	na	na	98.5	50.0	50.8%	48.5	49.2%	na	na	na		
1977	152.9	87.3	57.1%	65.6	42.9%	na	na	na	107.8	54.2	50.3%	53.6	49.7%	na	na	na		
1978	167.4	95.4	57.0%	72.0	43.0%	na	na	na	117.7	58.5	49.7%	59.2	50.3%	na	na	na		
1979	180.1	101.7	56.5%	78.4	43.5%	na	na	na	127.6	62.6	49.0%	65.0	51.0%	na	na	na		
1980	235.9	125.8	53.3%	110.1	46.7%	na	na	na	148.0	63.8	43.1%	84.2	56.9%	na	na	na		
1981	292.7	147.7	50.5%	145.0	49.5%	na	na	na	193.3	85.6	44.3%	107.7	55.7%	na	na	na		
1982	322.8	152.7	47.3%	170.1	52.7%	na	na	na	226.6	103.2	45.5%	123.4	54.5%	na	na	na		
1983	355.9	171.8	48.3%	184.1	51.7%	na	na	na	243.5	114.7	47.1%	128.8	52.9%	na	na	na		
1984	384.5	186.8	48.6%	197.8	51.4%	na	na	na	266.1	126.0	47.4%	140.1	52.6%	na	na	na		
1985	423.2	206.5	48.8%	216.7	51.2%	na	na	na	296.0	139.6	47.2%	156.4	52.8%	na	na	na		
1986	458.2	226.2	49.4%	231.9	50.6%	na	na	na	322.9	153.4	47.5%	169.5	52.5%	na	na	na		
1987	496.5	247.0	49.8%	249.5	50.2%	146.9	29.6%	102.6	352.4	168.2	47.7%	184.2	52.3%	88.5	25.1%	95.7	27.2%	
1988	530.3	263.5	49.7%	266.9	50.3%	168.5	31.8%	98.3	378.1	179.5	47.5%	198.6	52.5%	97.9	25.9%	100.7	26.6%	
1989	576.0	285.8	49.6%	290.2	50.4%	179.3	31.1%	110.9	413.3	194.3	47.0%	219.0	53.0%	110.7	26.8%	108.3	26.2%	
1990	623.6	307.1	49.2%	316.5	50.8%	196.0	31.4%	120.5	449.1	206.7	46.0%	242.4	54.0%	124.8	27.8%	117.5	26.2%	
1991	658.1	320.4	48.7%	337.7	51.3%	211.2	32.1%	126.5	475.1	214.2	45.1%	260.9	54.9%	137.5	28.9%	123.5	26.0%	
1992	670.5	323.8	48.3%	346.7	51.7%	218.2	32.5%	128.5	480.0	212.2	44.2%	267.7	55.8%	142.4	29.7%	125.3	26.1%	
1993	684.6	327.3	47.8%	357.3	52.2%	226.7	33.1%	130.6	488.6	212.0	43.4%	276.7	56.6%	149.2	30.5%	127.5	26.1%	
1994	720.0	340.7	47.3%	379.3	52.7%	241.7	33.6%	137.6	511.8	215.8	42.2%	296.1	57.8%	161.9	31.6%	134.2	26.2%	
1995	752.0	350.1	46.6%	401.9	53.4%	260.6	34.6%	141.4	535.6	222.9	41.6%	312.7	58.4%	174.7	32.6%	138.0	25.8%	
1996	780.5	356.7	45.7%	423.8	54.3%	276.8	35.5%	147.0	559.2	228.6	40.9%	330.6	59.1%	186.2	33.3%	144.4	25.8%	
1997	824.1	370.2	44.9%	453.8	55.1%	296.5	36.0%	157.3	592.9	238.7	40.3%	354.2	59.7%	200.5	33.8%	153.7	25.9%	
1998	874.5	388.6	44.4%	485.8	55.6%	316.1	36.1%	169.7	630.8	251.9	39.9%	378.9	60.1%	213.5	33.8%	165.4	26.2%	
1999	934.4	409.8	43.9%	524.6	56.1%	341.4	36.5%	183.2	675.6	267.2	39.6%	408.4	60.4%	229.6	34.0%	178.8	26.5%	
2000	1,001.3	427.1	42.7%	574.1	57.3%	371.7	37.1%	202.4	729.7	282.7	38.7%	447.0	61.3%	249.2	34.1%	197.8	27.1%	
2001	1,107.7	456.0	41.2%	651.6	58.8%	419.5	37.9%	232.1	804.9	303.4	37.7%	501.5	62.3%	275.2	34.2%	226.3	28.1%	
2002	1,232.8	481.4	39.0%	751.4	61.0%	485.7	39.4%	265.8	885.1	319.1	36.0%	566.0	64.0%	304.5	34.4%	261.5	29.5%	
2003	1,383.5	510.8	36.9%	872.7	63.1%	568.5	41.1%	304.2	985.3	339.1	34.4%	646.2	65.6%	346.8	35.2%	299.4	30.4%	
2004	1,577.2	557.9	35.4%	1,019.3	64.6%	664.6	42.1%	354.7	1,110.7	370.1	33.3%	740.7	66.7%	392.4	35.3%	348.3	31.4%	
2005	1,901.9	654.7	34.4%	1,247.2	65.6%	807.6	42.5%	439.6	1,315.2	431.0	32.8%	884.2	67.2%	452.5	34.4%	431.7	32.8%	
2006	2,441.0	802.9	32.9%	1,638.1	67.1%	1,045.8	42.8%	592.3	1,648.7	534.9	32.4%	1,113.7	67.6%	530.9	32.2%	582.9	35.4%	

Notes: Data on the value of homestead property unavailable before 1987.  
 Vacant residential land included as non-residential value.

Table 3  
 Florida Just and Taxable Value - Residential and Non-Residential Property  
 Percent Changes  
 1974 - 2006

	Just Value										Taxable Value																											
	All Property					Non-Residential					Residential					All Property					Non-Residential					Residential												
	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change	Just Value \$ bil	% Change				
																																			(1)	(2)	(3)	(4)
1974	117.4	na	71.7	na	45.7	na	na	na	na	na	na	na	na	81.3	na	44.5	na	36.8	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na		
1975	129.2	10.1%	76.4	6.5%	52.8	15.6%	na	na	na	na	na	na	na	90.1	10.9%	47.5	6.8%	42.6	15.9%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	
1976	139.6	8.1%	79.7	4.4%	59.9	13.5%	na	na	na	na	na	na	na	98.5	9.3%	50.0	5.3%	48.5	13.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	
1977	152.9	9.5%	87.3	9.5%	65.6	9.5%	na	na	na	na	na	na	na	107.8	9.4%	54.2	8.4%	53.6	10.5%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1978	167.4	9.5%	95.4	9.3%	72.0	9.7%	na	na	na	na	na	na	na	117.7	9.2%	58.5	7.8%	59.2	10.5%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1979	180.1	7.6%	101.7	6.6%	78.4	8.9%	na	na	na	na	na	na	na	127.6	8.4%	62.6	7.0%	65.0	9.8%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1980	235.9	31.0%	125.8	23.7%	110.1	40.4%	na	na	na	na	na	na	na	148.0	16.0%	63.8	1.9%	84.2	29.6%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1981	292.7	24.1%	147.7	17.4%	145.0	31.7%	na	na	na	na	na	na	na	193.3	30.6%	85.6	34.3%	107.7	27.8%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1982	322.8	10.3%	152.7	3.4%	170.1	17.3%	na	na	na	na	na	na	na	226.6	17.2%	103.2	20.6%	123.4	14.6%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1983	355.9	10.3%	171.8	12.5%	184.1	8.2%	na	na	na	na	na	na	na	243.5	7.4%	114.7	11.1%	128.8	4.4%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1984	384.5	8.0%	186.8	8.7%	197.8	7.4%	na	na	na	na	na	na	na	266.1	9.3%	126.0	9.9%	140.1	8.8%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1985	423.2	10.1%	206.5	10.6%	216.7	9.6%	na	na	na	na	na	na	na	296.0	11.2%	139.6	10.8%	156.4	11.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1986	458.2	8.3%	226.2	9.6%	231.9	7.0%	na	na	na	na	na	na	na	322.9	9.1%	153.4	9.9%	169.5	8.3%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1987	496.5	8.4%	247.0	9.2%	249.5	7.6%	146.9	na	102.6	na	na	na	na	352.4	9.1%	168.2	9.6%	184.2	8.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1988	530.3	6.8%	263.5	6.7%	266.9	7.0%	168.5	14.7%	98.3	-4.2%	na	na	na	378.1	7.3%	179.5	6.7%	198.6	7.8%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1989	576.0	8.6%	285.8	8.5%	290.2	8.7%	179.3	6.4%	110.9	12.8%	na	na	na	413.3	9.3%	194.3	8.2%	219.0	10.3%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1990	623.6	8.3%	307.1	7.5%	316.5	9.1%	196.0	9.3%	120.5	8.6%	na	na	na	449.1	8.7%	206.7	6.4%	242.4	10.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1991	658.1	5.5%	320.4	4.3%	337.7	6.7%	211.2	7.7%	126.5	5.1%	na	na	na	475.1	5.8%	214.2	3.6%	260.9	7.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1992	670.5	1.9%	323.8	1.1%	346.7	2.7%	218.2	3.3%	128.5	1.5%	na	na	na	480.0	1.0%	212.2	-0.9%	267.7	2.6%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1993	684.6	2.1%	327.3	1.1%	357.3	3.1%	226.7	3.9%	130.6	1.6%	na	na	na	488.6	1.8%	212.0	-0.1%	276.7	3.3%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1994	720.0	5.2%	340.7	4.1%	379.3	6.2%	241.7	6.6%	137.6	5.4%	na	na	na	511.8	4.7%	215.8	1.8%	296.1	7.0%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1995	752.0	4.4%	350.1	2.7%	401.9	6.0%	260.6	7.8%	141.4	2.7%	na	na	na	535.6	4.6%	222.9	3.3%	312.7	5.6%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1996	780.5	3.8%	356.7	1.9%	423.8	5.4%	276.8	6.2%	147.0	4.0%	na	na	na	559.2	4.4%	228.6	2.6%	330.6	5.7%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1997	824.1	5.6%	370.2	3.8%	453.8	7.1%	296.5	7.1%	157.3	7.0%	na	na	na	592.9	6.0%	238.7	4.4%	354.2	7.1%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1998	874.5	6.1%	388.6	5.0%	485.8	7.1%	316.1	6.6%	169.7	7.9%	na	na	na	630.8	6.4%	251.9	5.5%	378.9	7.0%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
1999	934.4	6.9%	409.8	5.4%	524.6	8.0%	341.4	8.0%	183.2	7.9%	na	na	na	675.6	7.1%	267.2	6.1%	408.4	7.8%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2000	1,001.3	7.2%	427.1	4.2%	574.1	9.4%	371.7	8.9%	202.4	10.5%	na	na	na	729.7	8.0%	282.7	5.8%	447.0	9.5%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2001	1,107.7	10.6%	456.0	6.8%	651.6	13.5%	419.5	12.9%	232.1	14.7%	na	na	na	804.9	10.3%	303.4	7.3%	501.5	12.2%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2002	1,232.8	11.3%	481.4	5.6%	751.4	15.3%	485.7	15.8%	265.8	14.5%	na	na	na	885.1	10.0%	319.1	5.2%	566.0	12.9%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2003	1,383.5	12.2%	510.8	6.1%	872.7	16.1%	568.5	17.1%	304.2	14.5%	na	na	na	985.3	11.3%	339.1	6.3%	646.2	14.2%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2004	1,577.2	14.0%	557.9	9.2%	1,019.3	16.8%	664.6	16.9%	354.7	16.6%	na	na	na	1,110.7	12.7%	370.1	9.1%	740.7	14.6%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2005	1,901.9	20.6%	654.7	17.4%	1,247.2	22.4%	807.6	21.5%	439.6	23.9%	na	na	na	1,315.2	18.4%	431.0	16.5%	884.2	19.4%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
2006	2,441.0	28.3%	802.9	22.6%	1,638.1	31.3%	1,045.8	29.5%	592.3	34.7%	na	na	na	1,648.7	25.4%	534.9	24.1%	1,113.7	26.0%	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na

Notes: Data on the value of homestead property unavailable before 1987.  
 Vacant residential land included as non-residential value.

**Table 4**  
**Florida Taxable Value - Residential and Non-Residential Property**  
**Without Save Our Homes**  
**1987 - 2006**

	All Property*			Non-Residential			Residential						Save Our Homes Differential	
	Taxable Value \$ bil (1)	Taxable Value \$ bil (2)	% of Tot. TV (3)	All Residential*		Homestead*		Non-Homestead		Tax. Value \$ bil (10)	% of Tax. Value (11)			
				Tax. Value \$ bil (4)	% of Tot. TV (5)	Tax. Value \$ bil (6)	% of Tot. TV (7)	Tax. Value \$ bil (8)	% of Tot. TV (9)					
1987	352.4	168.2	47.7%	184.2	52.3%	88.5	25.1%	95.7	27.2%	na	na			
1988	378.1	179.5	47.5%	198.6	52.5%	97.9	25.9%	100.7	26.6%	na	na			
1989	413.3	194.3	47.0%	219.0	53.0%	110.7	26.8%	108.3	26.2%	na	na			
1990	449.1	206.7	46.0%	242.4	54.0%	124.8	27.8%	117.5	26.2%	na	na			
1991	475.1	214.2	45.1%	260.9	54.9%	137.5	28.9%	123.5	26.0%	na	na			
1992	480.0	212.2	44.2%	267.7	55.8%	142.4	29.7%	125.3	26.1%	na	na			
1993	488.6	212.0	43.4%	276.7	56.6%	149.2	30.5%	127.5	26.1%	na	na			
1994	511.8	215.8	42.2%	296.1	57.8%	161.9	31.6%	134.2	26.2%	na	na			
1995	539.1	222.9	41.3%	316.2	58.7%	178.2	33.1%	138.0	25.6%	3.5	0.7%			
1996	565.1	228.6	40.5%	336.5	59.5%	192.1	34.0%	144.4	25.5%	5.9	1.1%			
1997	601.9	238.7	39.7%	363.2	60.3%	209.5	34.8%	153.7	25.5%	9.1	1.5%			
1998	644.9	251.9	39.1%	393.0	60.9%	227.6	35.3%	165.4	25.6%	14.1	2.2%			
1999	696.4	267.2	38.4%	429.2	61.6%	250.4	36.0%	178.8	25.7%	20.8	3.1%			
2000	757.5	282.7	37.3%	474.8	62.7%	277.0	36.6%	197.8	26.1%	27.8	3.8%			
2001	852.6	303.4	35.6%	549.2	64.4%	322.9	37.9%	226.3	26.5%	47.7	5.9%			
2002	965.5	319.1	33.0%	646.4	67.0%	384.9	39.9%	261.5	27.1%	80.4	9.1%			
2003	1,103.2	339.1	30.7%	764.1	69.3%	464.7	42.1%	299.4	27.1%	117.9	12.0%			
2004	1,275.9	370.1	29.0%	905.8	71.0%	557.5	43.7%	348.3	27.3%	165.1	14.9%			
2005	1,561.5	431.0	27.6%	1,130.5	72.4%	698.8	44.8%	431.7	27.6%	246.3	18.7%			
2006	2,053.0	534.9	26.1%	1,518.1	73.9%	935.2	45.6%	582.9	28.4%	404.4	24.5%			

\* Save Our Homes differential added back into these values.

**Table 5**  
**Proportionate Tax Burden - Residential and Non-Residential Property**  
**Current Law and Without Save Our Homes - Percent of Total Taxable Value**  
**1987 - 2006**

	All Property				Residential Property as % of All Property				Homestead as a % of Residential Property			
	Current Law		Without SOH		Current Law		Without SOH		Current Law		Without SOH	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	Non-Residential	Residential	Non-Residential	Residential	Homestead	Non-Homestead	Homestead	Non-Homestead	Homestead	Non-Homestead	Homestead	Non-Homestead
1987	48%	52%	48%	52%	25%	27%	25%	27%	48%	52%	48%	52%
1988	47%	53%	47%	53%	26%	27%	26%	27%	49%	51%	49%	51%
1989	47%	53%	47%	53%	27%	26%	27%	26%	51%	49%	51%	49%
1990	46%	54%	46%	54%	28%	26%	28%	26%	52%	48%	52%	48%
1991	45%	55%	45%	55%	29%	26%	29%	26%	53%	47%	53%	47%
1992	44%	56%	44%	56%	30%	26%	30%	26%	53%	47%	53%	47%
1993	43%	57%	43%	57%	31%	26%	31%	26%	54%	46%	54%	46%
1994	42%	58%	42%	58%	32%	26%	32%	26%	55%	45%	55%	45%
Begin Save Our Homes												
1995	42%	58%	41%	59%	33%	26%	33%	26%	56%	44%	56%	44%
1996	41%	59%	40%	60%	33%	26%	34%	26%	56%	44%	57%	43%
1997	40%	60%	40%	60%	34%	26%	35%	26%	57%	43%	58%	42%
1998	40%	60%	39%	61%	34%	26%	35%	26%	56%	44%	58%	42%
1999	40%	60%	38%	62%	34%	26%	36%	26%	56%	44%	58%	42%
2000	39%	61%	37%	63%	34%	27%	37%	26%	56%	44%	58%	42%
2001	38%	62%	36%	64%	34%	28%	38%	27%	55%	45%	59%	41%
2002	36%	64%	33%	67%	34%	30%	40%	27%	54%	46%	60%	40%
2003	34%	66%	31%	69%	35%	30%	42%	27%	54%	46%	61%	39%
2004	33%	67%	29%	71%	35%	31%	44%	27%	53%	47%	62%	38%
2005	33%	67%	28%	72%	34%	33%	45%	28%	51%	49%	62%	38%
2006	32%	68%	26%	74%	32%	35%	46%	28%	48%	52%	62%	38%

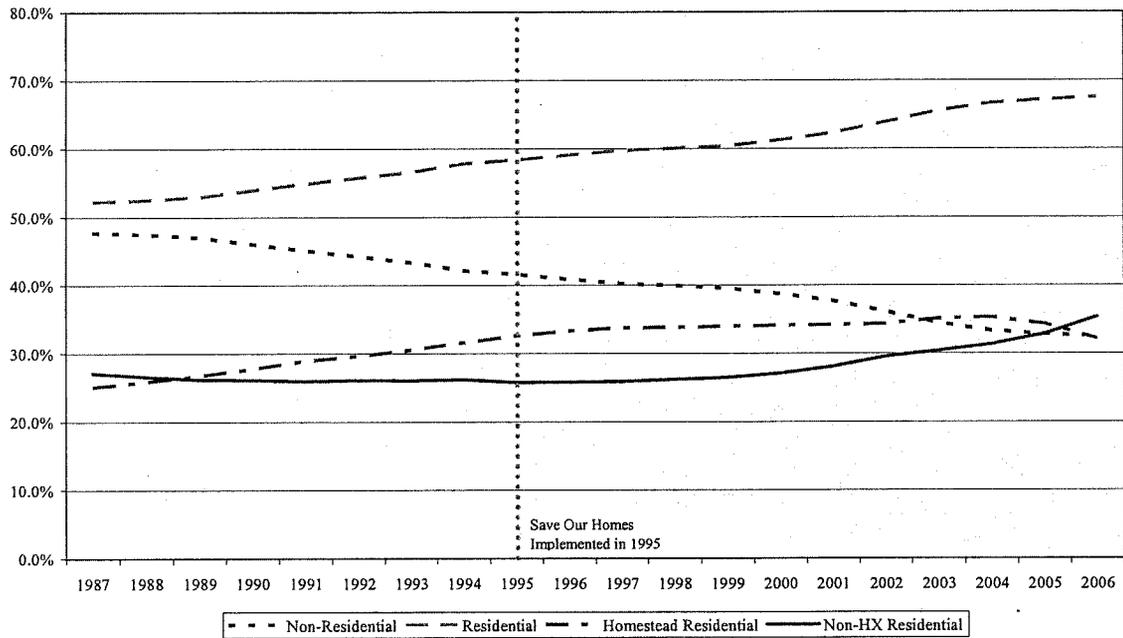
Table 3 presents the same data as in Table 2 but shows annual percentage changes for each category of property. For both just and taxable value, as was reflected in the proportions of total presented in Table 2, residential property value grew faster than non-residential property value in almost every year (see Table 3, columns (4) and (6) and columns (14) and (16)). Also as stated above, since the data first became available in 1987, the growth of homestead just value was somewhat faster than growth of non-homestead residential value (see Table 3, columns (8) and (10)).

Prior to 1998, the taxable value of homestead property value grew more rapidly than non-homestead residential property value (see Table 3, columns (18) and (20)). This is in part due to the fact that because of the \$25,000 homestead exemption, increases in the value of homestead property were added to a reduced taxable base and therefore grew at a higher percentage rate. Since 1997, however, in large part due to the effect of Save Our Homes, the taxable value of non-homestead residential property has grown more quickly than homestead taxable value.

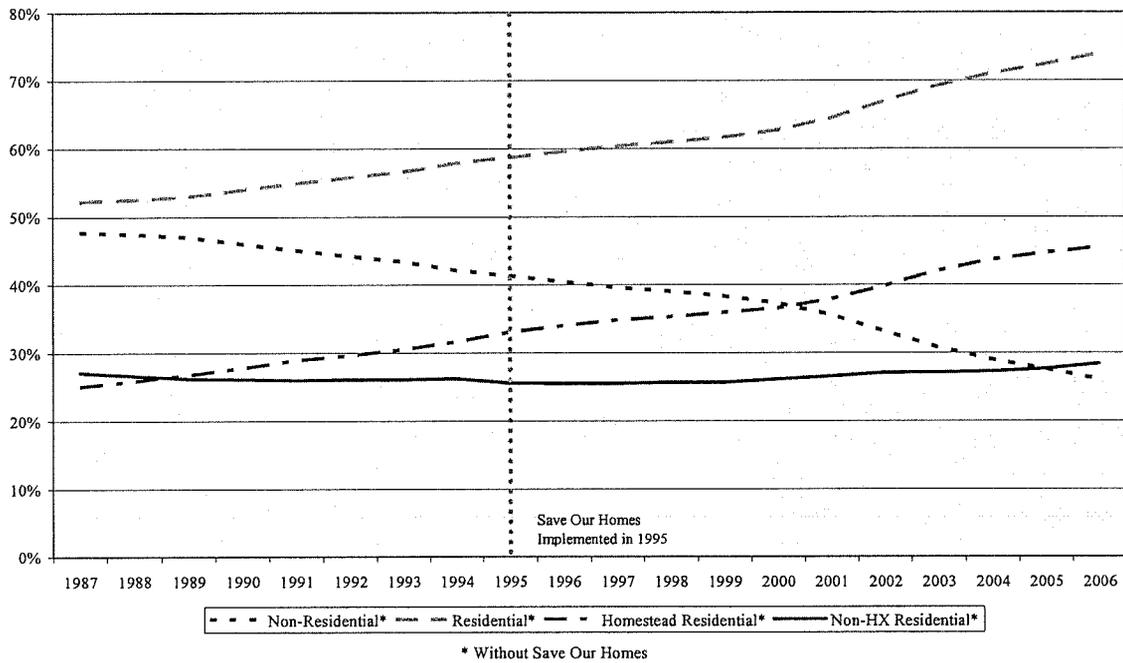
**The Impact of Save Our Homes:** The Save Our Homes amendment has had a significant impact on the proportions of property taxes paid by residential versus non-residential property owners and by homestead versus non-homestead residential property owners. Table 4 shows recalculated taxable values in the absence of the Save Our Homes assessment differential. Table 5 presents a direct comparison of the proportions of property tax paid by residential and non-residential property owners with and without the Save Our Homes amendment. As would be expected in the absence of Save Our Homes, the trends toward increased proportions of residential property, particularly homestead property, extending back to at least 1974 would have continued. By 2006, residential property would have made up almost three-quarters (74%) of all taxable property in the state (see Table 5, column (4)). Rather than the one-third of total taxable value that is represented by homestead property under current law, removing the Save Our Homes differential would increase the proportion of taxes paid by homestead property to a level approaching one-half (46%) (see Table 5, columns (5) and (7)). Conversely, the proportion of property taxes paid by non-residential property would have declined further: 26% in 2006 rather than the 33% under current law (see Table 5, columns (1) and (3)).

As can be seen from the tables, the interaction between the long term trend toward an increased proportion of residential property, especially homestead property, and the effects of the Save Our Homes amendment has been interesting. Chart 2 displays the relative percentage of taxable value of residential property, homestead property, non-homestead residential property and non-residential property. In each year, the sum of residential and non-residential property equals 100%. Likewise, in each year the sum of the bottom three lines -- homestead, non-homestead residential and non-residential property -- equals 100%. The proportion of taxable value of homestead property has remained surprisingly constant. In 1994, the year before Save Our Homes first impacted the tax roll, the proportion of the tax roll represented by homestead property was 32%. This proportion rose slightly to 35% in 2004 before declining again to 32% in 2006 (see Table 2, column (16)).

**Chart 2**  
**Florida Tax Burdens: Non-Residential, Residential, Homestead and Non-Homestead Residential With**  
**Save Our Homes: 1987 - 2006**



**Chart 3**  
**Florida Tax Burdens: Non-Residential, Residential, Homestead and Non-Homestead Residential**  
**Without Save Our Homes: 1987 - 2006**



\* Without Save Our Homes

Chart 3 displays the tax roll proportions in the absence of Save Our Homes. The proportion of residential property, especially homestead property, would have increased significantly with homestead property representing 45.5% of the roll in 2006 (see Table 4, column (7)). Save Our Homes acted to counteract this rise, but only in 2005 and 2006 did the proportion of homestead property on the tax roll actually decline. While this decline is expected to continue, it will not necessarily do so permanently as the SOH differential becomes a more stable portion of just value.

The other side of the Save Our Homes effect can also be seen in the charts. The proportion of the taxable value of both non-residential and non-homestead residential property increased substantially as a result of the Save Our Homes amendment. Without Save Our Homes, the proportion of taxable value of non-residential and non-homestead residential property in 2006 would have been 26.1% and 28.4% respectively (see Table 4, columns (3) and (9)). With Save Our Homes, the proportion for non-residential is 32.5% and for non-homestead residential, 35.4% (see Table 2, columns (12) and (18)).

In the above analysis, the effect of eliminating the Save Our Homes differential was to increase the taxable value of homestead property from \$529.0 billion to \$934.3 billion in 2006, an increase of 74%. This does not imply a similar percentage increase in property taxes on homestead property. To raise the same amount of revenue from the higher tax roll, the required millage levies would be lower. In 2006, for the same amount of revenue being raised both before and after the removal of the SOH differential, taxes paid by homestead property owners as a group would increase by approximately 40% and all other property owners would experience approximately a 20% reduction in taxes.

### **III. The Impact of Save Our Homes on Counties**

The impact of Save Our Homes varies considerably by county. Looking ahead to Table 13, the practical effect of this variation can be seen in the estimated reduction in millage rates (to raise the same revenue) if Save Our Homes was eliminated. The estimated reduction in 2006 varies from a high of 27.0% in Brevard County to a low of 5.4% in Hamilton County. Four main factors contribute to this wide range. First, there is tremendous variation in the mix of residential and non-residential property among counties. Table 6 shows the relative just value proportions of residential and non-residential property in 2006. In Glades County, residential property comprises just 9.2% of just value and non-residential property comprises 90.8%. In Palm Beach County, residential just value makes up 77.9% of the roll with 22.1% being non-residential (see Table 6, columns (3) and (5)).

Second, there is wide variation in the portion of residential property that is homestead property. In Walton County, the just value of homestead property is 25.9% of residential just value, while in Baker County homestead property comprises 85.7% of total residential just value (see Table 7, column (3)). Third, variation in taxable value between residential and non-residential property is caused by variation in non-homestead related tax preferences. These include classified use agricultural assessments, exempt and

**Table 6**  
**County Just Value - Residential and Non-Residential Property**  
**2006**

	Just Value								
	All Property Just Value \$ bil (1)	Non-Residential		Residential				Non-Residential	
		Just Value \$ bil (2)	% of Tot. JV (3)	All Residential		Homestead		Non-Homestead	
				Just Value \$ bil (4)	% of Tot. JV (5)	Just Value \$ bil (6)	% of Tot. JV (7)	Just Value \$ bil (8)	% of Tot. JV (9)
Alachua	20,585,227,893	9,990,530,456	48.5%	10,594,697,437	51.5%	7,394,966,437	35.9%	3,199,731,000	15.5%
Baker	1,480,393,181	927,648,085	62.7%	552,745,096	37.3%	473,828,054	32.0%	78,917,042	5.3%
Bay	26,377,605,706	10,357,508,588	39.3%	16,020,097,118	60.7%	7,211,119,660	27.3%	8,808,977,458	33.4%
Bradford	2,004,736,002	1,328,032,271	66.2%	676,703,731	33.8%	515,745,834	25.7%	160,957,897	8.0%
Brevard	72,558,319,898	26,436,610,422	36.4%	46,121,709,476	63.6%	33,354,637,556	46.0%	12,767,071,920	17.6%
Broward	236,737,262,717	55,532,123,788	23.5%	181,205,138,929	76.5%	122,790,601,219	51.9%	58,414,537,710	24.7%
Calhoun	865,661,080	658,049,771	76.0%	207,611,309	24.0%	164,435,610	19.0%	43,175,699	5.0%
Charlotte	33,706,693,425	13,786,113,850	40.9%	19,920,579,575	59.1%	12,426,691,849	36.9%	7,493,887,726	22.2%
Citrus	16,665,292,544	7,457,659,703	44.7%	9,207,632,841	55.3%	6,878,864,128	41.3%	2,328,768,713	14.0%
Clay	13,835,544,911	3,892,136,942	28.1%	9,943,407,969	71.9%	7,875,260,622	56.9%	2,068,147,347	14.9%
Collier	102,566,593,592	23,385,337,862	22.8%	79,181,255,730	77.2%	40,071,839,392	39.1%	39,109,416,338	38.1%
Columbia	4,405,558,362	2,591,653,329	58.8%	1,813,905,033	41.2%	1,389,086,247	31.5%	424,818,786	9.6%
Dade	313,503,503,630	99,271,807,799	31.7%	214,231,695,831	68.3%	129,436,930,080	41.3%	84,794,765,751	27.0%
De Soto	3,959,889,038	2,888,627,853	72.9%	1,071,261,185	27.1%	744,638,900	18.8%	326,622,285	8.2%
Dixie	1,886,994,120	1,400,321,889	74.2%	486,672,231	25.8%	257,865,698	13.7%	228,806,533	12.1%
Duval	77,477,171,305	31,086,393,256	40.1%	46,390,778,049	59.9%	33,940,700,047	43.8%	12,446,078,002	16.1%
Escambia	27,013,080,551	11,958,776,436	44.3%	15,054,304,115	55.7%	9,195,602,825	34.0%	5,858,701,290	21.7%
Flagler	14,634,177,798	5,512,464,219	37.7%	9,121,713,579	62.3%	5,580,413,887	38.1%	3,541,299,692	24.2%
Franklin	5,736,761,393	2,813,012,426	49.0%	2,923,748,967	51.0%	1,025,594,111	17.9%	1,898,154,856	33.1%
Gadsden	2,629,798,650	1,603,127,369	61.0%	1,026,671,281	39.0%	807,578,484	30.7%	219,092,797	8.3%
Gilchrist	1,497,273,228	1,036,408,642	69.2%	460,864,586	30.8%	343,538,691	22.9%	117,325,895	7.8%
Glades	4,299,048,112	3,903,836,475	90.8%	395,211,637	9.2%	229,731,277	5.3%	165,480,360	3.8%
Gulf	4,535,229,886	2,911,182,343	64.2%	1,624,047,543	35.8%	673,650,909	14.9%	950,396,634	21.0%
Hamilton	1,527,904,972	1,317,932,830	86.3%	209,972,142	13.7%	161,416,863	10.6%	48,555,279	3.2%
Hardee	3,520,000,714	3,066,052,015	87.1%	453,948,699	12.9%	323,047,562	9.2%	130,901,137	3.7%
Hendry	7,103,872,169	5,875,487,996	82.7%	1,228,384,173	17.3%	801,171,623	11.3%	427,212,550	6.0%
Hernando	15,664,379,518	5,892,033,109	37.6%	9,772,346,409	62.4%	7,434,222,452	47.5%	2,338,123,957	14.9%
Highlands	8,765,269,320	4,017,674,918	45.8%	4,747,594,402	54.2%	3,232,480,448	36.9%	1,515,113,954	17.3%
Hillsborough	119,776,510,189	44,584,226,345	37.2%	75,192,283,844	62.8%	55,845,177,773	46.6%	19,347,106,071	16.2%
Holmes	1,176,650,910	892,833,184	75.9%	283,817,726	24.1%	222,004,893	18.9%	61,812,833	5.3%
Indian River	26,167,888,765	8,877,846,999	33.9%	17,290,041,766	66.1%	10,865,568,923	41.5%	6,424,472,843	24.6%
Jackson	2,683,899,039	1,829,437,960	68.2%	854,461,079	31.8%	671,784,960	25.0%	182,676,119	6.8%
Jefferson	1,305,226,979	992,241,688	76.0%	312,985,291	24.0%	241,262,945	18.5%	71,722,346	5.5%
Lafayette	881,301,279	730,763,556	82.9%	150,537,723	17.1%	109,706,606	12.4%	40,831,117	4.6%
Lake	25,686,363,894	8,438,244,148	32.9%	17,248,119,746	67.1%	12,009,632,176	46.8%	5,238,487,570	20.4%
Lee	118,133,335,661	41,722,515,770	35.3%	76,410,819,891	64.7%	42,371,330,671	35.9%	34,039,489,220	28.8%
Leon	25,097,319,454	11,305,037,505	45.0%	13,792,281,949	55.0%	9,726,963,021	38.8%	4,065,318,928	16.2%
Levy	4,867,489,848	3,109,206,734	63.9%	1,758,283,114	36.1%	1,220,529,493	25.1%	537,753,621	11.0%
Liberty	849,615,711	733,503,797	86.3%	116,111,914	13.7%	85,662,171	10.1%	30,449,743	3.6%
Madison	1,166,480,890	837,698,013	71.8%	328,782,877	28.2%	242,338,531	20.8%	86,444,346	7.4%
Manatee	42,449,640,476	11,705,428,444	27.6%	30,744,212,032	72.4%	19,933,725,501	47.0%	10,810,486,531	25.5%
Marion	29,432,076,343	14,113,190,418	48.0%	15,318,885,925	52.0%	11,347,604,422	38.6%	3,971,281,503	13.5%
Martin	34,237,195,559	11,191,783,777	32.7%	23,045,411,782	67.3%	16,185,378,378	47.3%	6,860,033,404	20.0%
Monroe	39,808,584,064	11,627,115,583	29.2%	28,181,468,481	70.8%	11,932,328,560	30.0%	16,249,139,921	40.8%
Nassau	9,772,216,350	3,228,083,159	33.0%	6,544,133,191	67.0%	3,844,024,664	39.3%	2,700,108,527	27.6%
Okaloosa	25,598,982,759	7,501,360,997	29.3%	18,097,621,762	70.7%	9,628,595,467	37.6%	8,469,026,295	33.1%
Okechobee	4,130,795,190	2,737,124,776	66.3%	1,393,670,414	33.7%	946,208,323	22.9%	447,462,091	10.8%
Orange	127,468,735,764	50,566,581,184	39.7%	76,902,154,580	60.3%	46,739,323,611	36.7%	30,162,830,969	23.7%
Osceola	28,746,171,978	12,252,766,093	42.6%	16,493,405,885	57.4%	8,439,667,146	29.4%	8,053,738,739	28.0%
Palm Beach	232,655,607,230	51,313,899,075	22.1%	181,341,708,155	77.9%	117,940,274,226	50.7%	63,401,433,929	27.3%
Pasco	40,745,769,968	13,062,880,841	32.1%	27,682,889,127	67.9%	20,145,175,716	49.4%	7,537,713,411	18.5%
Pinellas	115,859,856,837	29,996,084,018	25.9%	85,863,772,819	74.1%	57,784,521,099	49.9%	28,079,251,720	24.2%
Polk	43,699,057,826	18,007,172,042	41.2%	25,691,885,784	58.8%	17,126,315,088	39.2%	8,565,570,696	19.6%
Putnam	6,759,954,054	3,782,524,403	56.0%	2,977,429,651	44.0%	1,984,404,189	29.4%	993,025,462	14.7%
Saint Johns	31,761,724,624	9,987,568,556	31.4%	21,774,156,068	68.6%	14,689,837,735	46.3%	7,084,318,333	22.3%
Saint Lucie	38,097,096,962	16,809,308,519	44.1%	21,287,788,443	55.9%	13,491,524,343	35.4%	7,796,264,100	20.5%
Santa Rosa	14,671,757,219	5,722,729,384	39.0%	8,949,027,835	61.0%	6,517,150,668	44.4%	2,431,877,167	16.6%
Sarasota	84,111,607,833	19,546,954,343	23.2%	64,564,653,490	76.8%	39,695,659,574	47.2%	24,868,993,916	29.6%
Seminole	43,271,618,829	11,803,058,800	27.3%	31,468,560,029	72.7%	23,810,095,457	55.0%	7,658,464,572	17.7%
Sumter	7,128,148,152	2,642,905,984	37.1%	4,485,242,168	62.9%	3,230,835,505	45.3%	1,254,406,663	17.6%
Suwannee	3,144,850,859	2,074,337,825	66.0%	1,070,513,034	34.0%	832,571,005	26.5%	237,942,029	7.6%
Taylor	1,960,146,761	1,318,060,082	67.2%	642,086,679	32.8%	380,308,080	19.4%	261,778,599	13.4%
Union	633,755,899	479,981,343	75.7%	153,774,556	24.3%	126,406,267	19.9%	27,368,289	4.3%
Volusia	58,290,291,461	16,960,162,175	29.1%	41,330,129,286	70.9%	26,360,095,676	45.2%	14,970,033,610	25.7%
Wakulla	2,216,988,744	983,096,971	44.3%	1,233,891,773	55.7%	886,972,564	40.0%	346,919,209	15.6%
Walton	19,354,889,136	7,343,252,931	37.9%	12,011,636,205	62.1%	3,106,489,254	16.1%	8,905,146,951	46.0%
Washington	1,611,284,852	1,149,461,298	71.3%	461,823,554	28.7%	334,125,414	20.7%	127,698,140	7.9%
	2,440,954,132,063	802,858,973,360	32.9%	1,638,095,158,703	67.1%	1,045,791,240,562	42.8%	592,303,918,141	24.3%

**Table 7  
Homestead Just Value as % of Residential Just Value**

	Residential Just Value \$ bil (1)	Homestead Just Value \$ bil (2)	Homestead Just Value as % of Residential Just Value (3)
Walton	12,011,636,205	3,106,489,254	25.9%
Franklin	2,923,748,967	1,025,594,111	35.1%
Gulf	1,624,047,543	673,650,909	41.5%
Monroe	28,181,468,481	11,932,328,560	42.3%
Bay	16,020,097,118	7,211,119,660	45.0%
Collier	79,181,255,730	40,071,839,392	50.6%
Osceola	16,493,405,885	8,439,667,146	51.2%
Dixie	486,672,231	257,865,698	53.0%
Okaloosa	18,097,621,762	9,628,595,467	53.2%
Lee	76,410,819,891	42,371,330,671	55.5%
Glades	395,211,637	229,731,277	58.1%
Nassau	6,544,133,191	3,844,024,664	58.7%
Taylor	642,086,679	380,308,080	59.2%
Dade	214,231,695,831	129,436,930,080	60.4%
Orange	76,902,154,580	46,739,323,611	60.8%
Escambia	15,054,304,115	9,195,602,825	61.1%
Flagler	9,121,713,579	5,580,413,887	61.2%
Sarasota	64,564,653,490	39,695,659,574	61.5%
Charlotte	19,920,579,575	12,426,691,849	62.4%
Indian River	17,290,041,766	10,865,568,923	62.8%
Saint Lucie	21,287,788,443	13,491,524,343	63.4%
Volusia	41,330,129,286	26,360,095,676	63.8%
Manatee	30,744,212,032	19,933,725,501	64.8%
Palm Beach	181,341,708,155	117,940,274,226	65.0%
Hendry	1,228,384,173	801,171,623	65.2%
Putnam	2,977,429,651	1,984,404,189	66.6%
Polk	25,691,885,784	17,126,315,088	66.7%
Pinellas	85,863,772,819	57,784,521,099	67.3%
Saint Johns	21,774,156,068	14,689,837,735	67.5%
Broward	181,205,138,929	122,790,601,219	67.8%
Okechobee	1,393,670,414	946,208,323	67.9%
Highlands	4,747,594,402	3,232,480,448	68.1%
Levy	1,758,283,114	1,220,529,493	69.4%
De Soto	1,071,261,185	744,638,900	69.5%
Lake	17,248,119,746	12,009,632,176	69.6%
Alachua	10,594,697,437	7,394,966,437	69.8%
Martin	23,045,411,782	16,185,378,378	70.2%
Leon	13,792,281,949	9,726,963,021	70.5%
Hardee	453,948,699	323,047,562	71.2%
Wakulla	1,233,891,773	886,972,564	71.9%
Sumter	4,485,242,168	3,230,835,505	72.0%
Brevard	46,121,709,476	33,354,637,556	72.3%
Washington	461,823,554	334,125,414	72.3%
Pasco	27,682,889,127	20,145,175,716	72.8%
Santa Rosa	8,949,027,835	6,517,150,668	72.8%
Lafayette	150,537,723	109,706,606	72.9%
Duval	46,390,778,049	33,944,700,047	73.2%
Madison	328,782,877	242,338,531	73.7%
Liberty	116,111,914	85,662,171	73.8%
Marion	15,318,885,925	11,347,604,422	74.1%
Hillsborough	75,192,283,844	55,845,177,773	74.3%
Gilchrist	460,864,586	343,538,691	74.5%
Citrus	9,207,632,841	6,878,864,128	74.7%
Seminole	31,468,560,029	23,810,095,457	75.7%
Hernando	9,772,346,409	7,434,222,452	76.1%
Bradford	676,703,731	515,745,834	76.2%
Columbia	1,813,905,033	1,389,086,247	76.6%
Hamilton	209,972,142	161,416,863	76.9%
Jefferson	312,985,291	241,262,945	77.1%
Suwannee	1,070,513,034	832,571,005	77.8%
Holmes	283,817,726	222,004,893	78.2%
Jackson	854,461,079	671,784,960	78.6%
Gadsden	1,026,671,281	807,578,484	78.7%
Clay	9,943,407,969	7,875,260,622	79.2%
Calhoun	207,611,309	164,435,610	79.2%
Union	153,774,556	126,406,267	82.2%
Baker	552,745,096	473,828,054	85.7%
State	1,638,095,158,703	1,045,791,240,562	63.8%

immune government property and exempt institutional (churches, schools, charitable, etc.) property.

And fourth, the relative impact of Save Our Homes is different even within homestead property. Table 11 shows the 2006 Save Our Homes differential by county as a percentage of homestead just value. Counties are listed in ascending order based on this percentage. The proportion of the just value of homestead property included in the Save Our Homes differential varies from a low in Jackson County of 14.7% to a high in Monroe County of 51.8%. This variation is primarily a function of the growth in value of homestead property since the inception of Save Our Homes and the turnover rate of homestead property in each of the counties.

Tables 12 and 13 show the effect on millage levies of the Save Our Homes amendment by county in 2005 and 2006 respectively. The exact impact of the Save Our Homes differential in each county is a function of the four factors discussed above. The aggregate millage for each county is calculated by dividing the total taxes levied by all taxing authorities in the county by the total taxable value in the county. The new aggregate millage rate is calculated for the county based on a roll with no Save Our Homes differential and assumes that the same total taxes are levied. Column (7) in each table shows the percentage by which the millage rate would be reduced if the Save Our Homes differential were eliminated. As discussed above, variation from county to county is considerable. For 2006, the largest reduction in millage would be in Broward County at 5.51 mills (25.0%) and the smallest reduction would be in Walton County at .54 mills (6.0%) (see Table 13, columns (6) and (7)). The largest percentage reduction in millage would be in Brevard County (27.0%) and the smallest percentage reduction would be in Hamilton County (5.4%).

#### **IV. The Effect of Save Our Homes on Affordable Housing as Evidenced by Property Tax Data**

Data available from property tax sources can be used to cast some light on the issue of affordable housing. Chapter 2006-311, L.O.F., specifically required that this report provide an analysis on the effect of Save Our Homes on affordable housing “as evidenced by the differential tax burden on first-time homestead property owners and long term homestead property owners”. Table 14 looks at differences in the assessed value of homesteads based on the purchase date of the homestead. Homestead properties with a sale date between 1999 and 2005 were selected from the 2006 tax roll. Only sales qualified as arms-length by the property appraiser and for which assessed value equaled just value on the immediately following tax roll were included. The \$150,000 value on the 2006 tax roll is approximately equal to the statewide median just value of homestead property in that year. The average SOH differentials are based on those for homestead properties in the value range of \$100,000 to \$250,000. The statewide average millage rate in 2006 is 18.47 mills.

**Table 8**  
**County Taxable Value - Residential and Non-Residential Property**  
**2006**

	Taxable Value								
	All Property	Non-Residential		Residential					
	Taxable Value \$ bil	Taxable Value \$ bil	% of Tot. TV	All Residential		Homestead		Non-Homestead	
				Tax. Value \$ bil	% of Tot. TV	Tax. Value \$ bil	% of Tot. TV	Tax. Value \$ bil	% of Tot. TV
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
Alachua	11,357,500,164	3,925,287,996	34.6%	7,432,212,168	65.4%	4,341,328,758	38.2%	3,090,883,410	27.2%
Baker	699,206,345	389,895,046	55.8%	309,311,299	44.2%	234,708,802	33.6%	74,602,497	10.7%
Bay	18,869,456,228	7,083,016,260	37.5%	11,786,439,968	62.5%	3,182,280,051	16.9%	8,604,159,917	45.6%
Bradford	809,041,156	411,288,626	50.8%	397,752,530	49.2%	246,189,933	30.4%	151,562,597	18.7%
Brevard	39,294,006,872	11,871,981,921	30.2%	27,422,024,951	69.8%	15,337,870,471	39.0%	12,084,154,480	30.8%
Broward	158,690,637,790	42,854,961,537	27.0%	115,835,676,253	73.0%	58,597,581,463	36.9%	57,238,094,790	36.1%
Calhoun	322,038,098	211,058,291	65.5%	110,979,807	34.5%	69,599,616	21.6%	41,380,191	12.8%
Charlotte	24,321,071,778	11,010,583,945	45.3%	13,310,487,833	54.7%	6,057,136,729	24.9%	7,253,351,104	29.8%
Citrus	11,637,462,135	6,130,771,644	52.7%	5,506,690,491	47.3%	3,212,921,238	27.6%	2,293,769,253	19.7%
Clay	9,122,880,536	2,671,256,512	29.3%	6,451,624,024	70.7%	4,470,975,693	49.0%	1,980,648,331	21.7%
Collier	77,238,074,548	15,951,935,800	20.7%	61,286,138,748	79.3%	22,413,339,975	29.0%	38,872,798,773	50.3%
Columbia	2,314,067,974	1,220,268,124	52.7%	1,093,799,850	47.3%	699,805,696	30.2%	393,994,154	17.0%
Dade	213,825,364,287	71,089,750,455	33.2%	142,735,613,832	66.8%	60,069,374,847	28.1%	82,666,238,985	38.7%
De Soto	1,758,121,481	1,151,664,774	65.5%	606,456,707	34.5%	300,293,211	17.1%	306,163,496	17.4%
Dixie	591,757,218	299,210,395	50.6%	292,546,823	49.4%	72,793,262	12.3%	219,753,561	37.1%
Duval	51,951,142,035	20,412,188,049	39.3%	31,538,953,986	60.7%	19,712,756,920	37.9%	11,826,197,066	22.8%
Escambia	14,927,916,899	5,918,288,721	39.6%	9,009,628,178	60.4%	4,260,907,023	28.5%	4,748,721,155	31.8%
Flagler	10,886,648,601	4,231,907,958	38.9%	6,654,740,643	61.1%	3,173,351,280	29.1%	3,481,389,363	32.0%
Franklin	4,113,401,327	1,781,045,390	43.3%	2,332,355,937	56.7%	450,732,585	11.0%	1,881,623,352	45.7%
Gadsden	1,236,476,463	637,441,271	51.6%	599,035,192	48.4%	397,974,719	32.2%	201,060,473	16.3%
Gilchrist	585,689,712	323,581,217	55.2%	262,108,495	44.8%	154,290,644	26.3%	107,817,851	18.4%
Glades	687,621,037	426,527,347	62.0%	261,093,690	38.0%	98,693,566	14.4%	162,400,124	23.6%
Gulf	2,905,749,172	1,681,167,478	57.9%	1,224,581,694	42.1%	282,065,790	9.7%	942,515,904	32.4%
Hamilton	663,890,212	556,131,455	83.8%	107,758,757	16.2%	63,835,160	9.6%	43,923,597	6.6%
Hardee	1,556,504,727	1,296,438,889	83.3%	260,065,838	16.7%	137,326,802	8.8%	122,739,036	7.9%
Hendry	2,823,903,339	2,113,860,274	74.9%	710,043,065	25.1%	313,176,825	11.1%	396,866,240	14.1%
Hernando	9,901,079,038	3,744,433,785	37.8%	6,156,645,253	62.2%	3,941,275,266	39.8%	2,215,369,987	22.4%
Highlands	5,840,455,726	2,967,679,685	50.8%	2,872,776,041	49.2%	1,403,106,101	24.0%	1,469,669,940	25.2%
Hillsborough	78,793,903,491	30,449,002,942	38.6%	48,344,900,549	61.4%	29,462,784,178	37.4%	18,882,116,371	24.0%
Holmes	424,269,500	282,651,685	66.6%	141,617,815	33.4%	90,011,099	21.2%	51,606,716	12.2%
Indian River	17,930,192,137	5,439,858,317	30.3%	12,490,333,820	69.7%	6,143,662,107	34.3%	6,346,671,713	35.4%
Jackson	1,349,707,707	833,953,109	61.8%	515,754,598	38.2%	343,830,560	25.5%	171,924,038	12.7%
Jefferson	518,623,632	326,809,335	63.0%	191,814,297	37.0%	122,604,316	23.6%	69,209,981	13.3%
Lafayette	213,297,993	131,676,763	61.7%	81,621,230	38.3%	42,169,366	19.8%	39,451,864	18.5%
Lake	18,975,642,475	6,609,913,571	34.8%	12,365,728,904	65.2%	7,253,131,795	38.2%	5,112,597,109	26.9%
Lee	89,502,215,901	33,512,423,718	37.4%	55,989,792,183	62.6%	22,403,677,183	25.0%	33,586,115,000	37.5%
Leon	14,675,884,867	4,984,203,538	34.0%	9,691,681,329	66.0%	5,733,764,794	39.1%	3,957,916,535	27.0%
Levy	2,346,565,082	1,355,080,806	57.7%	991,484,276	42.3%	475,481,970	20.3%	516,002,306	22.0%
Liberty	249,946,513	192,248,809	76.9%	57,697,704	23.1%	28,554,326	11.4%	29,143,378	11.7%
Madison	644,263,621	469,095,479	72.8%	175,168,142	27.2%	95,832,655	14.9%	79,335,487	12.3%
Manatee	30,735,678,005	8,886,974,562	28.9%	21,848,703,443	71.1%	11,334,322,722	36.9%	10,514,380,721	34.2%
Marion	17,429,268,825	7,667,445,681	44.0%	9,761,823,144	56.0%	5,952,120,864	34.2%	3,809,702,280	21.9%
Martin	21,541,040,137	6,550,222,230	30.4%	14,990,817,907	69.6%	8,265,418,869	38.4%	6,725,399,038	31.2%
Monroe	26,872,672,507	5,611,943,885	20.9%	21,260,728,622	79.1%	5,343,847,741	19.9%	15,916,880,881	59.2%
Nassau	7,246,175,600	2,342,412,332	32.3%	4,903,763,268	67.7%	2,243,601,566	31.0%	2,660,161,702	36.7%
Okaloosa	18,046,515,116	4,981,432,660	27.6%	13,065,082,456	72.4%	4,802,487,145	26.6%	8,262,595,311	45.8%
Okechobee	2,270,839,361	1,409,523,359	62.1%	861,316,002	37.9%	430,441,480	19.0%	430,874,522	19.0%
Orange	92,367,603,422	36,430,441,393	39.4%	55,937,162,029	60.6%	26,596,863,149	28.8%	29,340,298,880	31.8%
Osceola	21,989,200,577	9,356,167,909	42.5%	12,633,032,668	57.5%	4,620,310,412	21.0%	8,012,722,256	36.4%
Palm Beach	161,252,193,452	37,233,215,745	23.1%	124,018,977,707	76.9%	61,870,955,178	38.4%	62,148,022,529	38.5%
Pasco	25,750,555,212	8,178,523,229	31.8%	17,572,031,983	68.2%	10,447,912,879	40.6%	7,124,119,104	27.7%
Pinellas	75,661,254,861	21,406,194,951	28.3%	54,255,059,910	71.7%	27,394,751,976	36.2%	26,860,307,934	35.5%
Polk	30,014,236,274	12,971,982,393	43.2%	17,042,253,881	56.8%	8,649,238,964	28.8%	8,393,014,917	28.0%
Putnam	3,963,942,355	2,269,849,258	57.3%	1,694,093,097	42.7%	817,867,035	20.6%	876,226,062	22.1%
Saint Johns	22,129,008,582	6,480,954,198	29.3%	15,648,054,384	70.7%	8,842,241,887	40.0%	6,805,812,497	30.8%
Saint Lucie	24,344,463,819	9,875,077,885	40.6%	14,469,385,934	59.4%	6,834,436,519	28.1%	7,634,949,415	31.4%
Santa Rosa	8,709,973,431	3,022,848,770	34.7%	5,687,124,661	65.3%	3,575,547,638	41.1%	2,111,577,023	24.2%
Sarasota	59,015,112,897	14,172,884,044	24.0%	44,842,228,853	76.0%	20,478,663,501	34.7%	24,363,565,352	41.3%
Seminole	29,886,314,133	9,618,792,235	32.2%	20,267,521,898	67.8%	12,998,987,736	43.5%	7,268,534,162	24.3%
Sumter	4,622,447,404	1,443,362,343	31.2%	3,179,085,061	68.8%	1,961,265,413	42.4%	1,217,819,648	26.3%
Suwannee	1,512,757,217	980,034,275	64.8%	532,722,942	35.2%	327,578,521	21.7%	205,144,421	13.6%
Taylor	1,264,231,366	835,925,172	66.1%	428,306,194	33.9%	174,850,217	13.8%	253,455,977	20.0%
Union	203,099,015	116,946,095	57.6%	86,152,920	42.4%	60,708,534	29.9%	25,444,386	12.5%
Volusia	38,380,036,066	11,842,150,074	30.9%	26,537,885,992	69.1%	12,336,703,770	32.1%	14,201,182,222	37.0%
Wakulla	1,371,523,210	545,876,094	39.8%	825,647,116	60.2%	439,683,216	32.1%	385,963,900	28.1%
Walton	16,515,893,518	5,922,771,818	35.9%	10,593,121,700	64.1%	1,674,968,806	10.1%	8,918,152,894	54.0%
Washington	1,006,872,016	733,362,241	72.8%	273,509,775	27.2%	152,821,558	15.2%	120,688,217	12.0%
	1,648,658,586,195	537,837,855,746	32.6%	1,110,820,730,449	67.4%	534,519,794,073	32.4%	576,300,936,376	35.0%

**Table 9**  
**2006 County Taxable Value - Residential and Non-Residential Property**  
**Without Save Our Homes**

	Taxable Value (In the absence of the Save Our Homes Amendment)									
	All Property	Non-Residential		Residential						
	Taxable Value \$	Taxable Value \$	% of Tot. TV	All Residential		Homestead		Non-Homestead		
				Tax. Value \$	% of Tot. TV	Tax. Value \$	% of Tot. TV	Tax. Value \$	% of Tot. TV	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
Alachua	13,219,225,224	3,925,287,996	29.7%	9,293,937,228	70.3%	6,203,053,818	46.9%	3,090,883,410	23.4%	
Baker	827,424,713	389,895,046	47.1%	437,529,667	52.9%	362,927,170	43.9%	74,602,497	9.0%	
Bay	21,918,359,465	7,083,016,260	32.3%	14,835,343,205	67.7%	6,231,183,288	28.4%	8,604,159,917	39.3%	
Bradford	941,440,731	411,288,626	43.7%	530,152,105	56.3%	378,589,508	40.2%	151,562,597	16.1%	
Brevard	53,819,790,842	11,871,981,921	22.1%	41,947,808,921	77.9%	29,863,654,441	55.5%	12,084,154,480	22.5%	
Broward	211,507,754,165	42,854,961,537	20.3%	168,652,792,628	79.7%	111,414,697,838	52.7%	57,238,094,790	27.1%	
Calhoun	351,680,275	211,058,291	60.0%	140,621,984	40.0%	99,241,793	28.2%	41,380,191	11.8%	
Charlotte	29,547,036,351	11,010,583,945	37.3%	18,536,452,406	62.7%	11,283,101,302	38.2%	7,253,351,104	24.5%	
Citrus	14,139,226,295	6,130,771,644	43.4%	8,008,454,651	56.6%	5,714,685,398	40.4%	2,293,769,253	16.2%	
Clay	11,361,636,827	2,671,256,512	23.5%	8,690,380,315	76.5%	6,709,731,984	59.1%	1,980,648,331	17.4%	
Collier	92,936,160,555	15,951,935,800	17.2%	76,984,224,755	82.8%	38,111,425,982	41.0%	38,872,798,773	41.8%	
Columbia	2,658,921,655	1,220,268,124	45.9%	1,438,653,531	54.1%	1,044,659,377	39.3%	393,994,154	14.8%	
Dade	271,403,965,285	71,089,750,455	26.2%	200,314,214,830	73.8%	117,647,975,845	43.3%	82,666,238,985	30.5%	
De Soto	2,086,948,494	1,151,664,774	55.2%	935,283,720	44.8%	629,120,224	30.1%	306,163,496	14.7%	
Dixie	653,957,698	299,210,395	45.8%	354,747,303	54.2%	134,993,742	20.6%	219,753,561	33.6%	
Duval	61,428,459,415	20,412,188,049	33.2%	41,016,271,366	66.8%	29,190,074,300	47.5%	11,826,197,066	19.3%	
Escambia	18,198,972,229	5,918,288,721	32.5%	12,280,683,508	67.5%	7,531,962,353	41.4%	4,748,721,155	26.1%	
Flagler	12,609,906,382	4,231,907,958	33.6%	8,377,998,424	66.4%	4,896,609,061	38.8%	3,481,389,363	27.6%	
Franklin	4,615,306,617	1,781,045,390	38.6%	2,834,261,227	61.4%	952,637,875	20.6%	1,881,623,352	40.8%	
Gadsden	1,417,923,059	637,441,271	45.0%	780,481,788	55.0%	579,421,315	40.9%	201,060,473	14.2%	
Gilchrist	686,133,284	323,581,217	47.2%	362,552,067	52.8%	254,734,216	37.1%	107,817,851	15.7%	
Glades	766,863,983	426,527,347	55.6%	340,336,636	44.4%	177,936,512	23.2%	162,400,124	21.2%	
Gulf	3,207,498,768	1,681,167,478	52.4%	1,526,331,290	47.6%	583,815,386	18.2%	942,515,904	29.4%	
Hamilton	701,899,029	556,131,455	79.2%	145,767,574	20.8%	101,843,977	14.5%	43,923,597	6.3%	
Hardee	1,652,108,680	1,296,438,889	78.5%	355,669,791	21.5%	232,930,755	14.1%	122,739,036	7.4%	
Hernando	3,174,629,489	2,113,860,274	66.6%	1,060,769,215	33.4%	663,902,975	20.9%	396,866,240	12.5%	
Hernando	12,188,542,656	3,744,433,785	30.7%	8,444,108,871	69.3%	6,228,738,884	51.1%	2,215,369,987	18.2%	
Highlands	7,080,197,706	2,967,679,685	41.9%	4,112,518,021	58.1%	2,642,848,081	37.3%	1,469,669,940	20.8%	
Hillsborough	98,957,529,654	30,449,002,942	30.8%	68,508,526,712	69.2%	49,626,410,341	50.1%	18,882,116,371	19.1%	
Holmes	463,753,183	282,651,685	60.9%	181,101,498	39.1%	129,494,782	27.9%	51,606,716	11.1%	
Indian River	21,736,306,897	5,439,858,317	25.0%	16,296,448,580	75.0%	9,949,776,867	45.8%	6,346,671,713	29.2%	
Jackson	1,448,625,323	833,953,109	57.6%	614,672,214	42.4%	442,748,176	30.6%	171,924,038	11.9%	
Jefferson	574,122,624	326,809,335	56.9%	247,313,289	43.1%	178,103,308	31.0%	69,209,981	12.1%	
Lafayette	252,575,124	131,676,763	52.1%	120,898,361	47.9%	81,446,497	32.2%	39,451,864	15.6%	
Lake	21,921,544,168	6,609,913,571	30.2%	15,311,630,597	69.8%	10,199,033,488	46.5%	5,112,597,109	23.3%	
Lee	106,020,658,051	33,512,423,718	31.6%	72,508,234,333	68.4%	38,922,119,333	36.7%	33,586,115,000	31.7%	
Leon	17,330,512,075	4,984,203,538	28.8%	12,346,308,537	71.2%	8,388,392,002	48.4%	3,957,916,535	22.8%	
Levy	2,845,231,532	1,355,080,806	47.6%	1,490,150,726	52.4%	974,148,420	34.2%	516,002,306	18.1%	
Liberty	279,654,719	192,248,809	68.7%	87,405,910	31.3%	58,262,532	20.8%	29,143,378	10.4%	
Madison	709,368,854	469,095,479	66.1%	240,273,375	33.9%	160,937,888	22.7%	79,335,487	11.2%	
Manatee	37,563,279,136	8,886,974,562	23.7%	28,676,304,574	76.3%	18,161,923,853	48.4%	10,514,380,721	28.0%	
Marion	20,789,220,018	7,667,445,681	36.9%	13,121,774,337	63.1%	9,312,072,057	44.8%	3,809,702,280	18.3%	
Martin	28,426,830,046	6,550,222,230	23.0%	21,876,607,816	77.0%	15,151,208,778	53.3%	6,725,399,038	23.7%	
Monroe	33,053,098,814	5,611,943,885	17.0%	27,441,154,929	83.0%	11,524,274,048	34.9%	15,916,880,881	48.2%	
Nassau	8,377,628,774	2,342,412,332	28.0%	6,035,216,442	72.0%	3,375,054,740	40.3%	2,660,161,702	31.8%	
Okaloosa	21,833,858,174	4,981,432,660	22.8%	16,852,425,514	77.2%	8,589,830,203	39.3%	8,262,595,311	37.8%	
Okechobee	2,592,058,811	1,409,523,359	54.4%	1,182,535,452	45.6%	751,660,930	29.0%	430,874,522	16.6%	
Orange	107,403,379,443	36,430,441,393	33.9%	70,972,938,050	66.1%	41,632,639,170	38.8%	29,340,298,880	27.3%	
Osceola	24,545,764,604	9,356,167,909	38.1%	15,189,596,695	61.9%	7,176,874,439	29.2%	8,012,722,256	32.6%	
Palm Beach	209,037,506,037	37,233,215,745	17.8%	171,804,290,292	82.2%	109,656,267,763	52.5%	62,148,022,529	29.7%	
Pasco	32,493,297,257	8,178,523,229	25.2%	24,314,774,028	74.8%	17,190,654,924	52.9%	7,124,119,104	21.9%	
Pinellas	100,309,941,207	21,406,194,951	21.3%	78,903,746,256	78.7%	52,043,438,322	51.9%	26,860,307,934	26.8%	
Polk	35,496,422,447	12,971,982,393	36.5%	22,524,440,054	63.5%	14,131,425,137	39.8%	8,393,014,917	23.6%	
Putnam	4,597,252,180	2,269,849,258	49.4%	2,327,402,922	50.6%	1,451,176,860	31.6%	876,226,062	19.1%	
Saint Johns	26,917,475,094	6,480,954,198	24.1%	20,436,520,896	75.9%	13,630,708,399	50.6%	6,805,812,497	25.3%	
Saint Lucie	29,284,094,106	9,875,077,885	33.7%	19,409,016,221	66.3%	11,774,066,806	40.2%	7,634,949,415	26.1%	
Santa Rosa	10,627,762,050	3,022,848,770	28.4%	7,604,913,280	71.6%	5,493,336,257	51.7%	2,111,577,023	19.9%	
Sarasota	75,370,612,703	14,172,884,044	18.8%	61,197,728,659	81.2%	36,834,163,307	48.9%	24,363,565,352	32.3%	
Seminole	38,298,092,970	9,618,792,235	25.1%	28,679,300,735	74.9%	21,410,766,573	55.9%	7,268,534,162	19.0%	
Sumter	5,341,494,843	1,443,362,343	27.0%	3,898,132,140	73.0%	2,680,312,492	50.2%	1,217,819,648	22.8%	
Suwannee	1,824,023,226	980,034,275	53.7%	843,988,951	46.3%	638,844,530	35.0%	205,144,421	11.2%	
Taylor	1,343,287,145	835,925,172	62.2%	507,361,973	37.8%	253,905,996	18.9%	253,455,977	18.9%	
Union	227,494,441	116,946,095	51.4%	110,548,346	48.6%	85,103,960	37.4%	25,444,386	11.2%	
Volusia	49,428,144,571	11,842,150,074	24.0%	37,585,994,497	76.0%	23,384,812,275	47.3%	14,201,182,222	28.7%	
Wakulla	1,587,121,236	545,876,094	34.4%	1,041,245,142	65.6%	655,281,242	41.3%	385,963,900	24.3%	
Walton	17,562,515,384	5,922,771,818	33.7%	11,639,743,566	66.3%	2,721,590,672	15.5%	8,918,152,894	50.8%	
Washington	1,065,117,167	733,362,241	68.9%	331,754,926	31.1%	211,066,709	19.8%	120,688,217	11.3%	
	2,053,038,623,600	537,837,855,746	26.2%	1,515,200,767,854	73.8%	938,899,831,478	45.7%	576,300,936,376	28.1%	

**Table 10**  
**Proportionate Tax Burden - Residential and Non-Residential Property**  
**Current Law and Without Save Our Homes**  
**2006**

	All Property				Residential Property as % of All Property				Homestead as a % of Residential Property			
	Current Law		Without SOH		Current Law		Without SOH		Current Law		Without SOH	
	Non-Residential	Residential	Non-Residential	Residential	Homestead	Non-Homestead	Homestead	Non-Homestead	Homestead	Non-Homestead	Homestead	Non-Homestead
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Alachua	34.6%	65.4%	29.7%	70.3%	38.2%	27.2%	46.9%	23.4%	58.4%	41.6%	66.7%	33.3%
Baker	55.8%	44.2%	47.1%	52.9%	33.6%	10.7%	43.9%	9.0%	75.9%	24.1%	82.9%	17.1%
Bay	37.5%	62.5%	32.3%	67.7%	16.9%	45.6%	28.4%	39.3%	27.0%	73.0%	42.0%	58.0%
Bradford	50.8%	49.2%	43.7%	56.3%	30.4%	18.7%	40.2%	16.1%	61.9%	38.1%	71.4%	28.6%
Brevard	30.2%	69.8%	22.1%	77.9%	39.0%	30.8%	55.5%	22.5%	55.9%	44.1%	71.2%	28.8%
Broward	27.0%	73.0%	20.3%	79.7%	36.9%	36.1%	52.7%	27.1%	50.6%	49.4%	66.1%	33.9%
Calhoun	65.5%	34.5%	60.0%	40.0%	21.6%	12.8%	28.2%	11.8%	62.7%	37.3%	70.6%	29.4%
Charlotte	45.3%	54.7%	37.3%	62.7%	24.9%	29.8%	38.2%	24.5%	45.5%	54.5%	60.9%	39.1%
Citrus	52.7%	47.3%	43.4%	56.6%	27.6%	19.7%	40.4%	16.2%	58.3%	41.7%	71.4%	28.6%
Clay	29.3%	70.7%	23.5%	76.5%	49.0%	21.7%	59.1%	17.4%	69.3%	30.7%	77.2%	22.8%
Collier	20.7%	79.3%	17.2%	82.8%	29.0%	50.3%	41.0%	41.8%	36.6%	63.4%	49.5%	50.5%
Columbia	52.7%	47.3%	45.9%	54.1%	30.2%	17.0%	39.3%	14.8%	64.0%	36.0%	72.6%	27.4%
Dade	33.2%	66.8%	26.2%	73.8%	28.1%	38.7%	43.3%	30.5%	42.1%	57.9%	58.7%	41.3%
De Soto	65.5%	34.5%	55.2%	44.8%	17.1%	17.4%	30.1%	14.7%	49.5%	50.5%	67.3%	32.7%
Dixie	50.6%	49.4%	45.8%	54.2%	12.3%	37.1%	20.6%	33.6%	24.9%	75.1%	38.1%	61.9%
Duval	39.3%	60.7%	33.2%	66.8%	33.9%	22.8%	47.5%	19.3%	62.5%	37.5%	71.2%	28.8%
Escambia	39.6%	60.4%	32.5%	67.5%	28.5%	31.8%	41.4%	26.1%	47.3%	52.7%	61.3%	38.7%
Flagler	38.9%	61.1%	33.6%	66.4%	29.1%	32.0%	38.8%	27.6%	47.7%	52.3%	58.4%	41.6%
Franklin	43.3%	56.7%	38.6%	61.4%	11.0%	45.7%	20.6%	40.8%	19.3%	80.7%	33.6%	66.4%
Gadsden	51.6%	48.4%	45.0%	55.0%	32.2%	16.3%	40.9%	14.2%	66.4%	33.6%	74.2%	25.8%
Gilchrist	55.2%	44.8%	47.2%	52.8%	26.3%	18.4%	37.1%	15.7%	58.9%	41.1%	70.3%	29.7%
Glades	62.0%	38.0%	55.6%	44.4%	14.4%	23.6%	23.2%	21.2%	37.8%	62.2%	52.3%	47.7%
Gulf	57.9%	42.1%	52.4%	47.6%	9.7%	32.4%	18.2%	29.4%	23.0%	77.0%	38.2%	61.8%
Hamilton	83.8%	16.2%	79.2%	20.8%	9.6%	6.6%	14.5%	6.3%	59.2%	40.8%	69.9%	30.1%
Hardee	83.3%	16.7%	78.5%	21.5%	8.8%	7.9%	14.1%	7.4%	52.8%	47.2%	65.5%	34.5%
Hendry	74.9%	25.1%	66.6%	33.4%	11.1%	14.1%	20.9%	12.5%	44.1%	55.9%	62.6%	37.4%
Hernando	37.8%	62.2%	30.7%	69.3%	39.8%	22.4%	51.1%	18.2%	64.0%	36.0%	73.8%	26.2%
Highlands	50.8%	49.2%	41.9%	58.1%	24.0%	25.2%	37.3%	20.8%	48.8%	51.2%	64.3%	35.7%
Hillsborough	38.6%	61.4%	30.8%	69.2%	37.4%	24.0%	50.1%	19.1%	60.9%	39.1%	72.4%	27.6%
Holmes	66.6%	33.4%	60.9%	39.1%	21.2%	12.2%	27.9%	11.1%	63.6%	36.4%	71.5%	28.5%
Indian River	30.3%	69.7%	25.0%	75.0%	34.3%	35.4%	45.8%	29.2%	49.2%	50.8%	61.1%	38.9%
Jackson	61.8%	38.2%	57.6%	42.4%	25.5%	12.7%	30.6%	11.9%	66.7%	33.3%	72.0%	28.0%
Jefferson	63.0%	37.0%	56.9%	43.1%	23.6%	13.3%	31.0%	12.1%	63.9%	36.1%	72.0%	28.0%
Lafayette	61.7%	38.3%	52.1%	47.9%	19.8%	18.5%	32.2%	15.6%	51.7%	48.3%	67.4%	32.6%
Lake	34.8%	65.2%	30.2%	69.8%	38.2%	26.9%	46.5%	23.3%	58.7%	41.3%	66.6%	33.4%
Lee	37.4%	62.6%	31.6%	68.4%	25.0%	37.5%	36.7%	31.7%	40.0%	60.0%	53.7%	46.3%
Leon	34.0%	66.0%	28.8%	71.2%	39.1%	27.0%	48.4%	22.8%	59.2%	40.8%	67.9%	32.1%
Levy	57.7%	42.3%	47.6%	52.4%	20.3%	22.0%	34.2%	18.1%	48.0%	52.0%	65.4%	34.6%
Liberty	76.9%	23.1%	68.7%	31.3%	11.4%	11.7%	20.8%	10.4%	49.5%	50.5%	66.7%	33.3%
Madison	72.8%	27.2%	66.1%	33.9%	14.9%	12.3%	22.7%	11.2%	54.7%	45.3%	67.0%	33.0%
Manatee	28.9%	71.1%	23.7%	76.3%	36.9%	34.2%	48.4%	28.0%	51.9%	48.1%	63.3%	36.7%
Marion	44.0%	56.0%	36.9%	63.1%	34.2%	21.9%	44.8%	18.3%	61.0%	39.0%	71.0%	29.0%
Martin	30.4%	69.6%	23.0%	77.0%	38.4%	31.2%	53.3%	23.7%	55.1%	44.9%	69.3%	30.7%
Monroe	20.9%	79.1%	17.0%	83.0%	19.9%	59.2%	34.9%	48.2%	25.1%	74.9%	42.0%	58.0%
Nassau	32.3%	67.7%	28.0%	72.0%	31.0%	36.7%	40.3%	31.8%	45.8%	54.2%	55.9%	44.1%
Okaloosa	27.6%	72.4%	22.8%	77.2%	26.6%	45.8%	39.3%	37.8%	36.8%	63.2%	51.0%	49.0%
Okechobee	62.1%	37.9%	54.4%	45.6%	19.0%	19.0%	29.0%	16.6%	50.0%	50.0%	63.6%	36.4%
Orange	39.4%	60.6%	33.9%	66.1%	28.8%	31.8%	38.8%	27.3%	47.5%	52.5%	58.7%	41.3%
Osceola	42.5%	57.5%	38.1%	61.9%	21.0%	36.4%	29.2%	32.6%	36.6%	63.4%	47.2%	52.8%
Palm Beach	23.1%	76.9%	17.8%	82.2%	38.4%	38.5%	52.5%	29.7%	49.9%	50.1%	63.8%	36.2%
Pasco	31.8%	68.2%	25.2%	74.8%	40.6%	27.7%	52.9%	21.9%	59.5%	40.5%	70.7%	29.3%
Pinellas	28.3%	71.7%	21.3%	78.7%	36.2%	35.5%	51.9%	26.8%	50.5%	49.5%	66.0%	34.0%
Polk	43.2%	56.8%	36.5%	63.5%	28.8%	28.0%	39.8%	23.6%	50.8%	49.2%	62.7%	37.3%
Putnam	57.3%	42.7%	49.4%	50.6%	20.6%	22.1%	31.6%	19.1%	48.3%	51.7%	62.4%	37.6%
Saint Johns	29.3%	70.7%	24.1%	75.9%	40.0%	30.8%	50.6%	25.3%	56.5%	43.5%	66.7%	33.3%
Saint Lucie	40.6%	59.4%	33.7%	66.3%	28.1%	31.4%	40.2%	26.1%	47.2%	52.8%	60.7%	39.3%
Santa Rosa	34.7%	65.3%	28.4%	71.6%	41.1%	24.2%	51.7%	19.9%	62.9%	37.1%	72.2%	27.8%
Sarasota	24.0%	76.0%	18.8%	81.2%	34.7%	41.3%	48.9%	32.3%	45.7%	54.3%	60.2%	39.8%
Seminole	32.2%	67.8%	25.1%	74.9%	43.5%	24.3%	55.9%	19.0%	64.1%	35.9%	74.7%	25.3%
Sumter	31.2%	68.8%	27.0%	73.0%	42.4%	26.3%	50.2%	22.8%	61.7%	38.3%	68.8%	31.2%
Suwannee	64.8%	35.2%	53.7%	46.3%	21.7%	13.6%	35.0%	11.2%	61.5%	38.5%	75.7%	24.3%
Taylor	66.1%	33.9%	62.2%	37.8%	13.8%	20.0%	18.9%	18.9%	40.8%	59.2%	50.0%	50.0%
Union	57.6%	42.4%	51.4%	48.6%	29.9%	12.5%	37.4%	11.2%	70.5%	29.5%	77.0%	23.0%
Volusia	30.9%	69.1%	24.0%	76.0%	32.1%	37.0%	47.3%	28.7%	46.5%	53.5%	62.2%	37.8%
Wakulla	39.8%	60.2%	34.4%	65.6%	32.1%	28.1%	41.3%	24.3%	53.3%	46.7%	62.9%	37.1%
Walton	35.9%	64.1%	33.7%	66.3%	10.1%	54.0%	15.5%	50.8%	15.8%	84.2%	23.4%	76.6%
Washington	72.8%	27.2%	68.9%	31.1%	15.2%	12.0%	19.8%	11.3%	55.9%	44.1%	63.6%	36.4%
	32.6%	67.4%	26.2%	73.8%	32.4%	35.0%	45.7%	28.1%	48.1%	51.9%	62.0%	38.0%

**Table 11**  
**2006 Save Our Homes Differential as a Percent of**  
**Homestead Just Value**

	Homestead Just Value	Save Our Homes Differential	SOH Differential as % of Homestead Just Value
	(1)	(2)	(3)
Jackson	671,784,960	98,917,616	14.7%
Washington	334,125,414	58,245,151	17.4%
Holmes	222,004,893	39,483,683	17.8%
Calhoun	164,435,610	29,642,177	18.0%
Union	126,406,267	24,395,426	19.3%
Taylor	380,308,080	79,055,779	20.8%
Sumter	3,230,835,505	719,047,079	22.3%
Gadsden	807,578,484	181,446,596	22.5%
Jefferson	241,262,945	55,498,992	23.0%
Hamilton	161,416,863	38,008,817	23.5%
Dixie	257,865,698	62,200,480	24.1%
Wakulla	886,972,564	215,598,026	24.3%
Lake	12,009,632,176	2,945,901,693	24.5%
Columbia	1,389,086,247	344,853,681	24.8%
Alachua	7,394,966,437	1,861,725,060	25.2%
Bradford	515,745,834	132,399,575	25.7%
Madison	242,338,531	65,105,233	26.9%
Baker	473,828,054	128,218,368	27.1%
Leon	9,726,963,021	2,654,627,208	27.3%
Duval	33,944,700,047	9,477,317,380	27.9%
Clay	7,875,260,622	2,238,756,291	28.4%
Gilchrist	343,538,691	100,443,572	29.2%
Santa Rosa	6,517,150,668	1,917,788,619	29.4%
Nassau	3,844,024,664	1,131,453,174	29.4%
Hardee	323,047,562	95,603,953	29.6%
Marion	11,347,604,422	3,359,951,193	29.6%
Osceola	8,439,667,146	2,556,564,027	30.3%
Hernando	7,434,222,452	2,287,463,618	30.8%
Flagler	5,580,413,887	1,723,257,781	30.9%
Putnam	1,984,404,189	633,309,825	31.9%
Polk	17,126,315,088	5,482,186,173	32.0%
Orange	46,739,323,611	15,035,776,021	32.2%
Saint Johns	14,689,837,735	4,788,466,512	32.6%
Pasco	20,145,175,716	6,742,742,045	33.5%
Walton	3,106,489,254	1,046,621,866	33.7%
Okechobee	946,208,323	321,219,450	33.9%
Manatee	19,933,725,501	6,827,601,131	34.3%
Glades	229,731,277	79,242,946	34.5%
Liberty	85,662,171	29,708,206	34.7%
Indian River	10,865,568,923	3,806,114,760	35.0%
Seminole	23,810,095,457	8,411,778,837	35.3%
Escambia	9,195,602,825	3,271,055,330	35.6%
Lafayette	109,706,606	39,277,131	35.8%
Hillsborough	55,845,177,773	20,163,626,163	36.1%
Citrus	6,878,864,128	2,501,764,160	36.4%
Saint Lucie	13,491,524,343	4,939,630,287	36.6%
Suwannee	832,571,005	311,266,009	37.4%
Highlands	3,232,480,448	1,239,741,980	38.4%
Lee	42,371,330,671	16,518,442,150	39.0%
Collier	40,071,839,392	15,698,086,007	39.2%
Okaloosa	9,628,595,467	3,787,343,058	39.3%
Palm Beach	117,940,274,226	47,785,312,585	40.5%
Levy	1,220,529,493	498,666,450	40.9%
Sarasota	39,695,659,574	16,355,499,806	41.2%
Volusia	26,360,095,676	11,048,108,505	41.9%
Charlotte	12,426,691,849	5,225,964,573	42.1%
Bay	7,211,119,660	3,048,903,237	42.3%
Martin	16,185,378,378	6,885,789,909	42.5%
Pinellas	57,784,521,099	24,648,686,346	42.7%
Broward	122,790,601,219	52,817,116,375	43.0%
Brevard	33,354,637,556	14,525,783,970	43.5%
Hendry	801,171,623	350,726,150	43.8%
De Soto	744,638,900	328,827,013	44.2%
Dade	129,436,930,080	57,578,600,998	44.5%
Gulf	673,650,909	301,749,596	44.8%
Franklin	1,025,594,111	501,905,290	48.9%
Monroe	11,932,328,560	6,180,426,307	51.8%
	1,045,791,240,562	404,380,037,405	38.7%

**Table 12**  
**2005 Taxable Value - Actual and Without Save Our Homes**  
**Aggregate Millage Reduction To Raise Same Revenue On Roll Without Save Our Homes**

	2005 Taxable Value			2005 Aggregate Millage Rates			
	Actual \$	Without SOH \$	% Increase	Actual Rate	Millage To Raise Same Revenue Without Save Our Homes	Millage Reduction	% Reduction
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Alachua	9,675,417,960	11,025,922,890	14.0%	24.68	21.66	-3.02	-12.2%
Baker	587,273,020	674,872,047	14.9%	19.88	17.30	-2.58	-13.0%
Bay	12,673,450,592	13,811,407,499	9.0%	14.93	13.70	-1.23	-8.2%
Bradford	681,685,195	737,872,829	8.2%	19.11	17.65	-1.46	-7.6%
Brevard	31,028,487,900	41,793,665,510	34.7%	18.70	13.89	-4.82	-25.8%
Broward	132,467,522,938	166,493,329,280	25.7%	23.40	18.62	-4.78	-20.4%
Calhoun	279,385,618	289,753,414	3.7%	15.96	15.39	-0.57	-3.6%
Charlotte	16,010,308,415	18,884,692,713	18.0%	15.84	13.43	-2.41	-15.2%
Citrus	8,724,672,100	10,024,458,220	14.9%	18.44	16.05	-2.39	-13.0%
Clay	7,482,833,967	8,701,790,222	16.3%	17.72	15.24	-2.48	-14.0%
Collier	61,468,215,721	70,289,393,247	14.4%	12.72	11.13	-1.60	-12.5%
Columbia	1,889,280,479	2,056,562,412	8.9%	20.13	18.49	-1.64	-8.1%
Dade	173,807,661,260	212,248,100,024	22.1%	23.06	18.88	-4.18	-18.1%
De Soto	1,153,866,024	1,263,119,561	9.5%	18.60	16.99	-1.61	-8.6%
Dixie	487,228,032	580,745,931	19.2%	22.21	18.63	-3.58	-16.1%
Duval	45,820,685,567	53,009,161,191	15.7%	18.59	16.07	-2.52	-13.6%
Escambia	11,613,884,200	13,044,321,910	12.3%	18.58	16.54	-2.04	-11.0%
Flagler	7,932,905,478	9,025,351,054	13.8%	16.31	14.33	-1.97	-12.1%
Franklin	3,338,590,113	3,686,703,087	10.4%	9.28	8.40	-0.88	-9.4%
Gadsden	1,075,425,071	1,174,686,184	9.2%	19.06	17.45	-1.61	-8.5%
Gilchrist	460,190,914	494,881,901	7.5%	19.56	18.19	-1.37	-7.0%
Glades	560,473,719	593,263,153	5.9%	21.30	20.12	-1.18	-5.5%
Gulf	2,653,137,446	2,974,038,561	12.1%	12.56	11.20	-1.35	-10.8%
Hamilton	576,993,930	591,970,868	2.6%	19.02	18.54	-0.48	-2.5%
Hardee	1,386,469,976	1,418,324,019	2.3%	18.20	17.79	-0.41	-2.2%
Hendry	1,925,247,836	2,079,211,686	8.0%	21.57	19.97	-1.60	-7.4%
Hernando	7,668,136,229	9,042,428,239	17.9%	19.66	16.67	-2.99	-15.2%
Highlands	4,172,330,426	4,753,316,171	13.9%	19.03	16.70	-2.33	-12.2%
Hillsborough	64,575,411,915	76,852,290,805	19.0%	23.27	19.55	-3.72	-16.0%
Holmes	347,805,597	366,961,198	5.5%	17.89	16.96	-0.93	-5.2%
Indian River	14,279,412,670	16,784,203,860	17.5%	16.82	14.31	-2.51	-14.9%
Jackson	1,178,725,268	1,274,703,187	8.1%	15.31	14.16	-1.15	-7.5%
Jefferson	436,094,313	473,619,028	8.6%	19.57	18.02	-1.55	-7.9%
Lafayette	171,797,608	188,594,521	9.8%	18.61	16.95	-1.66	-8.9%
Lake	14,297,179,504	15,433,665,863	7.9%	18.32	16.97	-1.35	-7.4%
Lee	63,982,337,148	72,548,672,888	13.4%	18.68	16.47	-2.21	-11.8%
Leon	12,662,323,180	14,415,979,752	13.8%	20.41	17.93	-2.48	-12.2%
Levy	1,615,119,331	1,854,457,529	14.8%	18.94	16.50	-2.44	-12.9%
Liberty	212,040,061	225,144,523	6.2%	16.49	15.53	-0.96	-5.8%
Madison	515,584,258	547,933,989	6.3%	18.13	17.06	-1.07	-5.9%
Manatee	24,773,851,045	29,207,687,041	17.9%	18.28	15.50	-2.77	-15.2%
Marion	13,057,730,937	14,537,589,961	11.3%	18.05	16.22	-1.84	-10.2%
Martin	17,698,917,926	22,351,393,396	26.3%	17.12	13.55	-3.56	-20.8%
Monroe	21,688,844,165	26,052,262,738	20.1%	9.37	7.80	-1.57	-16.7%
Nassau	5,954,234,993	6,765,787,252	13.6%	17.78	15.65	-2.13	-12.0%
Okaloosa	13,607,497,614	15,536,991,954	14.2%	15.06	13.19	-1.87	-12.4%
Okechobee	1,856,688,966	2,056,787,583	10.8%	17.44	15.74	-1.70	-9.7%
Orange	75,373,932,205	82,622,569,512	9.6%	18.65	17.01	-1.64	-8.8%
Osceola	16,192,861,394	17,271,077,767	6.7%	17.52	16.42	-1.09	-6.2%
Palm Beach	130,344,516,337	159,358,792,358	22.3%	20.74	16.96	-3.78	-18.2%
Pasco	19,949,523,770	23,540,263,236	18.0%	17.06	14.45	-2.60	-15.3%
Pinellas	62,890,342,232	78,547,755,134	24.9%	22.40	17.94	-4.47	-19.9%
Polk	23,855,176,388	26,452,630,100	10.9%	19.99	18.02	-1.96	-9.8%
Putnam	3,182,606,632	3,535,955,940	11.1%	20.40	18.37	-2.04	-10.0%
Saint Johns	17,464,649,690	20,578,007,039	17.8%	15.65	13.28	-2.37	-15.1%
Saint Lucie	17,680,678,583	20,768,901,571	17.5%	23.42	19.94	-3.48	-14.9%
Santa Rosa	6,702,089,926	7,656,504,625	14.2%	14.90	13.05	-1.86	-12.5%
Sarasota	46,435,842,068	56,164,789,100	21.0%	15.17	12.54	-2.63	-17.3%
Seminole	24,116,900,198	28,284,871,291	17.3%	17.63	15.03	-2.60	-14.7%
Sumter	3,409,984,352	3,917,533,643	14.9%	16.87	14.68	-2.19	-13.0%
Suwannee	1,139,998,279	1,303,956,347	14.4%	19.19	16.78	-2.41	-12.6%
Taylor	1,116,616,469	1,179,346,528	5.6%	18.03	17.07	-0.96	-5.3%
Union	187,254,135	209,015,811	11.6%	19.73	17.67	-2.05	-10.4%
Volusia	30,002,303,241	36,263,552,590	20.9%	22.77	18.84	-3.93	-17.3%
Wakulla	1,158,819,798	1,376,839,925	18.8%	17.12	14.41	-2.71	-15.8%
Walton	12,823,805,149	13,565,047,096	5.8%	9.81	9.28	-0.54	-5.5%
Washington	652,227,331	672,754,594	3.1%	18.75	18.18	-0.57	-3.1%
	1,315,193,484,802	1,561,508,235,098	18.7%	19.60	16.51	-3.09	-15.8%

Table 13

**2006 Taxable Value - Actual and Without Save Our Homes**  
**Aggregate Millage Reduction To Raise Same Revenue On Roll Without Save Our Homes**

	2006 Taxable Value			2006 Aggregate Millage Rates			
	Actual	Without SOH	%	Actual	Millage To Raise Same Revenue	Millage	%
	\$	\$	Increase	Rate	Without Save Our Homes	Reduction	Reduction
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Alachua	11,357,500,164	13,219,225,224	16.4%	24.04	20.66	-3.39	-14.1%
Baker	699,206,345	827,424,713	18.3%	18.83	15.91	-2.92	-15.5%
Bay	18,869,456,228	21,918,359,465	16.2%	12.43	10.70	-1.73	-13.9%
Bradford	809,041,156	941,440,731	16.4%	18.51	15.91	-2.60	-14.1%
Brevard	39,294,006,872	53,819,790,842	37.0%	18.47	13.49	-4.99	-27.0%
Broward	158,690,637,790	211,507,754,165	33.3%	22.08	16.57	-5.51	-25.0%
Calhoun	322,038,098	351,680,275	9.2%	15.88	14.54	-1.34	-8.4%
Charlotte	24,321,071,778	29,547,036,351	21.5%	13.57	11.17	-2.40	-17.7%
Citrus	11,637,462,135	14,139,226,295	21.5%	16.76	13.80	-2.97	-17.7%
Clay	9,122,880,536	11,361,636,827	24.5%	17.40	13.97	-3.43	-19.7%
Collier	77,238,074,548	92,936,160,555	20.3%	11.97	9.95	-2.02	-16.9%
Columbia	2,314,067,974	2,658,921,655	14.9%	20.31	17.67	-2.63	-13.0%
Dade	213,825,364,287	271,403,965,285	26.9%	22.11	17.42	-4.69	-21.2%
De Soto	1,758,121,481	2,086,948,494	18.7%	16.63	14.01	-2.62	-15.8%
Dixie	591,757,218	653,957,698	10.5%	21.44	19.40	-2.04	-9.5%
Duval	51,951,142,035	61,428,459,415	18.2%	18.20	15.39	-2.81	-15.4%
Escambia	14,927,916,899	18,198,972,229	21.9%	18.37	15.07	-3.30	-18.0%
Flagler	10,886,648,601	12,609,906,382	15.8%	15.38	13.28	-2.10	-13.7%
Franklin	4,113,401,327	4,615,306,617	12.2%	8.59	7.66	-0.93	-10.9%
Gadsden	1,236,476,463	1,417,923,059	14.7%	18.74	16.34	-2.40	-12.8%
Gilchrist	585,689,712	686,133,284	17.1%	19.64	16.76	-2.87	-14.6%
Glades	687,621,037	766,863,983	11.5%	20.73	18.58	-2.14	-10.3%
Gulf	2,905,749,172	3,207,498,768	10.4%	10.75	9.74	-1.01	-9.4%
Hamilton	663,890,212	701,899,029	5.7%	18.76	17.74	-1.02	-5.4%
Hardee	1,556,504,727	1,652,108,680	6.1%	18.29	17.23	-1.06	-5.8%
Hendry	2,823,903,339	3,174,629,489	12.4%	19.10	16.99	-2.11	-11.0%
Hernando	9,901,079,038	12,188,542,656	23.1%	18.60	15.11	-3.49	-18.8%
Highlands	5,840,455,726	7,080,197,706	21.2%	18.22	15.03	-3.19	-17.5%
Hillsborough	78,793,903,491	98,957,529,654	25.6%	22.50	17.92	-4.59	-20.4%
Holmes	424,269,500	463,753,183	9.3%	15.58	14.26	-1.33	-8.5%
Indian River	17,930,192,137	21,736,306,897	21.2%	15.17	12.51	-2.66	-17.5%
Jackson	1,349,707,707	1,448,625,323	7.3%	14.53	13.53	-0.99	-6.8%
Jefferson	518,623,632	574,122,624	10.7%	18.91	17.08	-1.83	-9.7%
Lafayette	213,297,993	252,575,124	18.4%	18.24	15.41	-2.84	-15.6%
Lake	18,975,642,475	21,921,544,168	15.5%	18.17	15.73	-2.44	-13.4%
Lee	89,502,215,901	106,020,658,051	18.5%	16.80	14.18	-2.62	-15.6%
Leon	14,675,884,867	17,330,512,075	18.1%	19.54	16.55	-2.99	-15.3%
Levy	2,346,565,082	2,845,231,532	21.3%	17.48	14.41	-3.06	-17.5%
Liberty	249,946,513	279,654,719	11.9%	18.25	16.31	-1.94	-10.6%
Madison	644,263,621	709,368,854	10.1%	17.12	15.55	-1.57	-9.2%
Manatee	30,735,678,005	37,563,279,136	22.2%	17.73	14.51	-3.22	-18.2%
Marion	17,429,268,825	20,789,220,018	19.3%	17.19	14.41	-2.78	-16.2%
Martin	21,541,040,137	28,426,830,046	32.0%	16.19	12.27	-3.92	-24.2%
Monroe	26,872,672,507	33,053,098,814	23.0%	9.26	7.53	-1.73	-18.7%
Nassau	7,246,175,600	8,377,628,774	15.6%	16.92	14.63	-2.29	-13.5%
Okaloosa	18,046,515,116	21,833,858,174	21.0%	13.78	11.39	-2.39	-17.3%
Okechobee	2,270,839,361	2,592,058,811	14.1%	15.78	13.83	-1.96	-12.4%
Orange	92,367,603,422	107,403,379,443	16.3%	18.08	15.55	-2.53	-14.0%
Osceola	21,989,200,577	24,545,764,604	11.6%	16.09	14.42	-1.68	-10.4%
Palm Beach	161,252,193,452	209,037,506,037	29.6%	19.90	15.35	-4.55	-22.9%
Pasco	25,750,555,212	32,493,297,257	26.2%	16.93	13.42	-3.51	-20.8%
Pinellas	75,661,254,861	100,309,941,207	32.6%	21.24	16.02	-5.22	-24.6%
Polk	30,014,236,274	35,496,422,447	18.3%	19.54	16.52	-3.02	-15.4%
Putnam	3,963,942,355	4,597,252,180	16.0%	20.01	17.26	-2.76	-13.8%
Saint Johns	22,129,008,582	26,917,475,094	21.6%	16.31	13.41	-2.90	-17.8%
Saint Lucie	24,344,463,819	29,284,094,106	20.3%	22.13	18.40	-3.73	-16.9%
Santa Rosa	8,709,973,431	10,627,762,050	22.0%	14.46	11.85	-2.61	-18.0%
Sarasota	59,015,112,897	75,370,612,703	27.7%	14.26	11.16	-3.09	-21.7%
Seminole	29,886,314,133	38,298,092,970	28.1%	17.62	13.75	-3.87	-22.0%
Sumter	4,622,447,404	5,341,494,483	15.6%	15.36	13.29	-2.07	-13.5%
Suwannee	1,512,757,217	1,824,023,226	20.6%	18.01	14.93	-3.07	-17.1%
Taylor	1,264,231,366	1,343,287,145	6.3%	18.03	16.97	-1.06	-5.9%
Union	203,099,015	227,494,441	12.0%	19.17	17.11	-2.06	-10.7%
Volusia	38,380,036,066	49,428,144,571	28.8%	20.24	15.71	-4.52	-22.4%
Wakulla	1,371,523,210	1,587,121,236	15.7%	16.71	14.44	-2.27	-13.6%
Walton	16,515,893,518	17,562,515,384	6.3%	8.99	8.45	-0.54	-6.0%
Washington	1,006,872,016	1,065,117,167	5.8%	16.51	15.61	-0.90	-5.5%
	1,648,658,586,195	2,053,038,623,600	24.5%	18.47	14.83	-3.64	-19.7%

**Table 14**  
**Save Our Homes Affect on Property Taxes**  
**Based on Year Purchased**

Bought in:	Just Value	SOH Differential	Assessed Value	HX	Taxable Value	Millage Rate	Ad Valorem Taxes	Monthly Taxes
2005	\$150,000		\$150,000	\$25,000	\$125,000	18.47	\$2,309	\$192
2004	\$150,000	\$27,281	\$122,719	\$25,000	\$97,719	18.47	\$1,805	\$150
2003	\$150,000	\$44,643	\$105,357	\$25,000	\$80,357	18.47	\$1,484	\$124
2002	\$150,000	\$55,594	\$94,406	\$25,000	\$69,406	18.47	\$1,282	\$107
2001	\$150,000	\$63,236	\$86,764	\$25,000	\$61,764	18.47	\$1,141	\$95
2000	\$150,000	\$70,087	\$79,913	\$25,000	\$54,913	18.47	\$1,014	\$85
1999	\$150,000	\$73,712	\$76,288	\$25,000	\$51,288	18.47	\$947	\$79

For homes purchased in 2005, Save Our Homes would operate to set just value equal to assessed value in 2006, the first assessment date following the purchase. Monthly taxes on the \$150,000 home would be \$192. However, for a home with an identical just value in 2006 but purchased in 1999, the Save Our Homes differential would equal \$73,712, or 49% of the just value. Monthly taxes on this home would be \$79, or 41% of the monthly taxes of a similar home purchased in 2005 (after taking into account the \$25,000 homestead exemption). Assuming a mortgage rate of 6.5%, if the 2005 home purchaser could pay taxes equivalent to those paid by the 1999 purchaser, the difference in taxes would translate into allowing the purchase of a house valued at approximately \$18,000, or 12%, higher at the same total monthly payment.

Table 15 looks at homesteads on the 2005 tax roll in each county and compares the taxes that would be paid on a homestead with a taxable value equal to the median for the county with and without a Save Our Homes assessment differential. The first block (columns (1) through (6)) looks at only those homesteads where just value equals assessed value. Almost all of these will be homesteads purchased in calendar year 2005. The aggregate millage rate without SOH (column (4)) is taken from Table 12. It is calculated to be the rate for that county that would yield the same tax revenue as is currently levied when applied against a tax roll without Save Our Homes. Statewide, this would result in a millage reduction from 19.60 mills to 16.51 mills. However, as discussed in the previous section, there is considerable variation among counties. For this group of homesteads, where just value equals assessed value, the result of eliminating the SOH differential would be a reduction in average 2005 taxes of \$387, or 15.8%, for a median valued home.

The second block in Table 15 (columns (7) through (13)) represents homesteads with a just value greater than assessed value. All of these will be homesteads purchased prior to 2005. The median taxable value for this group is \$68,897 compared to \$125,144 for the first group. For this group, the result of eliminating the SOH assessment differential would be an increase in 2005 taxes levied of \$561, or 41.6%, on the median valued home. Again, there is considerable variation from county to county.

**Table 15**  
**2005 Median Homestead Taxable Value - With and Without Save Our Homes**  
**Affect on Taxes Levied of Removing SOH Assessment Differential**

	Homesteads With Just Value = Assessed Value						Homesteads With Just Value > Assessed Value						
	With SOH - Current Law			Without SOH			With SOH - Current Law			Without SOH			
	Median Tax. Value (1)	Aggregate Millage (2)	Taxes Levied (3)	Aggregate Millage (4)	Taxes Levied (5)	Difference (6)	Median Tax. Value (7)	Aggregate Millage (8)	Taxes Levied (9)	Median Tax. Value (10)	Aggregate Millage (11)	Taxes Levied (12)	Difference (13)
Alachua	\$99,414	24.68	\$2,454	21.66	\$2,153	-\$301	\$60,114	24.68	\$1,484	\$91,714	21.66	\$1,986	\$503
Baker	\$65,511	19.88	\$1,302	17.30	\$1,133	-\$169	\$26,912	19.88	\$535	\$42,086	17.30	\$728	\$193
Bay	\$106,272	14.93	\$1,587	13.70	\$1,456	-\$131	\$50,581	14.93	\$755	\$78,365	13.70	\$1,074	\$318
Bradford	\$41,650	19.11	\$796	17.65	\$735	-\$61	\$26,270	19.11	\$502	\$32,441	17.65	\$573	\$71
Brevard	\$129,654	18.70	\$2,425	13.89	\$1,800	-\$625	\$60,594	18.70	\$1,133	\$124,054	13.89	\$1,723	\$589
Broward	\$148,554	23.40	\$3,476	18.62	\$2,766	-\$710	\$82,194	23.40	\$1,923	\$154,164	18.62	\$2,870	\$947
Calhoun	\$19,483	15.96	\$311	15.39	\$300	-\$11	\$10,345	15.96	\$165	\$13,545	15.39	\$209	\$43
Charlotte	\$112,453	15.84	\$1,781	13.43	\$1,510	-\$271	\$65,523	15.84	\$1,038	\$112,499	13.43	\$1,510	\$473
Citrus	\$70,514	18.44	\$1,301	16.05	\$1,132	-\$169	\$39,214	18.44	\$723	\$64,714	16.05	\$1,039	\$316
Clay	\$114,179	17.72	\$2,024	15.24	\$1,740	-\$283	\$66,288	17.72	\$1,175	\$92,549	15.24	\$1,411	\$236
Collier	\$207,829	12.72	\$2,645	11.13	\$2,313	-\$332	\$131,930	12.72	\$1,679	\$213,879	11.13	\$2,380	\$701
Columbia	\$53,323	20.13	\$1,073	18.49	\$986	-\$87	\$30,281	20.13	\$609	\$40,351	18.49	\$746	\$137
Dade	\$152,509	23.06	\$3,517	18.88	\$2,880	-\$637	\$79,686	23.06	\$1,837	\$157,554	18.88	\$2,975	\$1,138
De Soto	\$43,277	18.60	\$805	16.99	\$735	-\$70	\$23,906	18.60	\$445	\$40,102	16.99	\$681	\$237
Dixie	\$14,314	22.21	\$318	18.63	\$267	-\$51	\$2,110	22.21	\$47	\$16,814	18.63	\$313	\$266
Duval	\$115,614	18.59	\$2,149	16.07	\$1,858	-\$291	\$64,187	18.59	\$1,193	\$96,214	16.07	\$1,546	\$353
Escambia	\$68,364	18.58	\$1,270	16.54	\$1,131	-\$139	\$39,104	18.58	\$727	\$55,224	16.54	\$913	\$187
Flagler	\$114,787	16.31	\$1,872	14.33	\$1,645	-\$227	\$80,404	16.31	\$1,311	\$117,379	14.33	\$1,682	\$371
Franklin	\$85,979	9.28	\$798	8.40	\$722	-\$75	\$34,405	9.28	\$319	\$77,608	8.40	\$652	\$333
Gadsden	\$45,921	19.06	\$875	17.45	\$801	-\$74	\$19,674	19.06	\$375	\$27,015	17.45	\$471	\$96
Gilchrist	\$38,137	19.56	\$746	18.19	\$694	-\$52	\$21,824	19.56	\$427	\$29,775	18.19	\$542	\$115
Glades	\$33,305	21.30	\$709	20.12	\$670	-\$39	\$24,959	21.30	\$532	\$35,947	20.12	\$723	\$192
Gulf	\$86,848	12.56	\$1,090	11.20	\$973	-\$118	\$27,009	12.56	\$339	\$92,973	11.20	\$1,041	\$702
Hamilton	\$23,513	19.02	\$447	18.54	\$436	-\$11	\$14,288	19.02	\$272	\$19,220	18.54	\$356	\$85
Hardee	\$31,000	18.20	\$564	17.79	\$552	-\$13	\$16,024	18.20	\$292	\$22,064	17.79	\$393	\$101
Hendry	\$48,934	21.57	\$1,056	19.97	\$977	-\$78	\$25,754	21.57	\$556	\$42,654	19.97	\$852	\$296
Hernando	\$87,394	19.66	\$1,718	16.67	\$1,457	-\$261	\$52,863	19.66	\$1,039	\$80,697	16.67	\$1,346	\$306
Highlands	\$59,899	19.03	\$1,140	16.70	\$1,000	-\$139	\$33,120	19.03	\$630	\$53,246	16.70	\$889	\$259
Hillsborough	\$121,975	23.27	\$2,838	19.55	\$2,385	-\$453	\$68,943	23.27	\$1,604	\$110,701	19.55	\$2,164	\$560
Holmes	\$22,466	17.89	\$402	16.96	\$381	-\$21	\$13,923	17.89	\$249	\$17,710	16.96	\$300	\$51
Indian River	\$124,944	16.82	\$2,101	14.31	\$1,788	-\$314	\$67,114	16.82	\$1,129	\$110,444	14.31	\$1,580	\$452
Jackson	\$40,286	15.31	\$617	14.16	\$570	-\$46	\$17,335	15.31	\$265	\$24,731	14.16	\$350	\$85
Jefferson	\$41,913	19.57	\$820	18.02	\$755	-\$65	\$18,075	19.57	\$354	\$26,252	18.02	\$473	\$119
Lafayette	\$34,541	18.61	\$643	16.95	\$585	-\$57	\$13,721	18.61	\$255	\$21,910	16.95	\$371	\$116
Lake	\$111,669	18.32	\$2,046	16.97	\$1,895	-\$151	\$67,703	18.32	\$1,240	\$86,765	16.97	\$1,472	\$232
Lee	\$134,194	18.68	\$2,506	16.47	\$2,210	-\$296	\$81,654	18.68	\$1,525	\$129,644	16.47	\$2,135	\$610
Leon	\$108,131	20.41	\$2,207	17.93	\$1,938	-\$268	\$75,506	20.41	\$1,541	\$109,068	17.93	\$1,955	\$414
Levy	\$32,239	18.94	\$611	16.50	\$532	-\$79	\$20,143	18.94	\$382	\$32,735	16.50	\$540	\$159
Liberty	\$21,864	16.49	\$361	15.53	\$340	-\$21	\$4,393	16.49	\$72	\$11,484	15.53	\$178	\$106
Madison	\$20,553	18.13	\$373	17.06	\$351	-\$22	\$12,703	18.13	\$230	\$17,760	17.06	\$303	\$73

**Table 15**  
**2005 Median Homestead Taxable Value - With and Without Save Our Homes**  
**Affect on Taxes Levied of Removing SOH Assessment Differential**

	Homesteads With Just Value = Assessed Value						Homesteads With Just Value > Assessed Value						
	With SOH - Current Law			Without SOH			With SOH - Current Law			Without SOH			
	Median Tax Value (1)	Aggregate Millage (2)	Taxes Levied (3)	Aggregate Millage (4)	Taxes Levied (5)	Difference (6)	Median Tax Value (7)	Aggregate Millage (8)	Taxes Levied (9)	Median Tax Value (10)	Aggregate Millage (11)	Taxes Levied (12)	Difference (13)
Manatee	\$159,835	18.28	\$2,922	15.50	\$2,478	-\$444	\$85,731	18.28	\$1,567	\$137,413	15.50	\$2,131	\$563
Marion	\$78,885	18.05	\$1,424	16.22	\$1,279	-\$145	\$41,858	18.05	\$756	\$58,266	16.22	\$945	\$189
Martin	\$192,924	17.12	\$3,302	13.55	\$2,615	-\$687	\$97,369	17.12	\$1,667	\$174,054	13.55	\$2,359	\$692
Monroe	\$355,564	9.37	\$3,331	7.80	\$2,773	-\$558	\$167,022	9.37	\$1,565	\$416,435	7.80	\$3,248	\$1,683
Nassau	\$122,226	17.78	\$2,173	15.65	\$1,913	-\$261	\$67,774	17.78	\$1,205	\$99,800	15.65	\$1,562	\$357
Okaloosa	\$102,239	15.06	\$1,540	13.19	\$1,348	-\$191	\$65,267	15.06	\$983	\$99,534	13.19	\$1,313	\$330
Okechobee	\$67,021	17.44	\$1,169	15.74	\$1,055	-\$114	\$33,687	17.44	\$587	\$55,770	15.74	\$878	\$290
Orange	\$138,506	18.65	\$2,583	17.01	\$2,356	-\$227	\$81,315	18.65	\$1,516	\$117,598	17.01	\$2,001	\$484
Osceola	\$107,614	17.52	\$1,885	16.42	\$1,767	-\$118	\$70,607	17.52	\$1,237	\$95,014	16.42	\$1,560	\$324
Palm Beach	\$187,206	20.74	\$3,882	16.96	\$3,175	-\$707	\$93,107	20.74	\$1,931	\$171,637	16.96	\$2,911	\$980
Pasco	\$105,340	17.06	\$1,797	14.45	\$1,523	-\$274	\$48,597	17.06	\$829	\$80,688	14.45	\$1,166	\$337
Pinellas	\$105,314	22.40	\$2,359	17.94	\$1,889	-\$470	\$60,614	22.40	\$1,358	\$109,614	17.94	\$1,966	\$608
Polk	\$81,294	19.99	\$1,625	18.02	\$1,465	-\$160	\$42,720	19.99	\$854	\$66,054	18.02	\$1,191	\$337
Putnam	\$33,551	20.40	\$685	18.37	\$616	-\$68	\$19,073	20.40	\$389	\$29,198	18.37	\$536	\$147
Saint Johns	\$171,454	15.65	\$2,683	13.28	\$2,277	-\$406	\$115,044	15.65	\$1,801	\$171,654	13.28	\$2,280	\$480
Saint Lucie	\$132,914	23.42	\$3,113	19.94	\$2,650	-\$463	\$54,316	23.42	\$1,272	\$107,414	19.94	\$2,142	\$870
Santa Rosa	\$99,292	14.90	\$1,480	13.05	\$1,295	-\$184	\$62,342	14.90	\$929	\$82,746	13.05	\$1,080	\$150
Sarasota	\$148,114	15.17	\$2,246	12.54	\$1,857	-\$389	\$92,184	15.17	\$1,398	\$151,614	12.54	\$1,901	\$503
Seminole	\$134,382	17.63	\$2,369	15.03	\$2,020	-\$349	\$87,777	17.63	\$1,547	\$130,193	15.03	\$1,957	\$410
Sumter	\$110,177	16.87	\$1,859	14.68	\$1,618	-\$241	\$50,740	16.87	\$856	\$81,545	14.68	\$1,197	\$341
Suwannee	\$36,448	19.19	\$700	16.78	\$612	-\$88	\$18,848	19.19	\$362	\$32,324	16.78	\$542	\$181
Taylor	\$32,655	18.03	\$589	17.07	\$557	-\$31	\$15,245	18.03	\$275	\$20,982	17.07	\$358	\$83
Union	\$32,615	19.73	\$643	17.67	\$576	-\$67	\$17,030	19.73	\$336	\$26,749	17.67	\$473	\$137
Volusia	\$109,093	22.77	\$2,484	18.84	\$2,055	-\$429	\$60,205	22.77	\$1,371	\$102,117	18.84	\$1,923	\$553
Wakulla	\$78,803	17.12	\$1,349	14.41	\$1,135	-\$214	\$34,390	17.12	\$589	\$61,477	14.41	\$886	\$297
Walton	\$109,392	9.81	\$1,073	9.28	\$1,015	-\$59	\$40,849	9.81	\$401	\$61,424	9.28	\$570	\$169
Washington	\$27,406	18.75	\$514	18.18	\$498	-\$16	\$18,008	18.75	\$338	\$21,376	18.18	\$389	\$51
Statewide	\$125,144	19.60	\$2,452	16.51	\$2,066	-\$387	\$68,897	19.60	\$1,350	\$115,784	16.51	\$1,911	\$561

Notes:  
1. Millage rate reductions assume that the same total property tax dollars are levied by all taxing authorities.  
2. Homestead value data based only on homesteads coded as single family, mobile home, condominium and cooperative.

With regard to affordable housing, chapter 2006-311, L.O.F., also stated that this report should look at the effect of Save Our Homes on property taxes paid by non-homestead property owners. For the state as a whole, column (18) in Table 2 shows non-homestead residential property value as a percentage of total taxable value. In 1987, the first year data is available and eight years prior to the implementation of Save Our Homes, non-homestead residential property made up 27.3% of total taxable value. Stated another way, such property paid 27.3% of all property taxes levied that year. By 2006, the proportion of taxable value made up of non-homestead residential property had risen to 35.4%. Table 4 presents similar data, but with the effect of the SOH differential removed. Without the SOH amendment, the proportion of property taxes paid by non-homestead residential property would have risen only slightly above the 1987 level, to 28.4%. These figures are displayed graphically in Charts 2 and 3. County by county figures for 2006 are displayed in Tables 8 and 9. As with all the SOH related county data, there is considerable variation across counties.

## **V. The Effect of Save Our Homes on the Distribution of School Property Taxes**

To analyze the impact of Save Our Homes on public school property taxes, at the request of the Department of Revenue the Department of Education re-calculated 2006 Florida Education Finance Program (FEFP) required local effort millage (RLE) rates based on a tax roll to which the Save Our Homes assessment differential had been added back. Tables 16 and 17 present the 2006 RLE calculations under current law. The statewide RLE millage rate necessary to collect the local property tax contribution amount specified by the Legislature in the General Appropriations Act is 5.010 mills. This rate varies by county (see Table 16, columns 7 and 8) because of an adjustment in the calculation formula to equalize the millage based on the previous year's level of assessment. Because of this adjustment, rates vary from a high of 5.323 to a low of 4.402. A second RLE millage rate adjustment is made for school districts in which the RLE would collect more than 90% of total FEFP funds for the district. In these districts, the RLE millage is lowered so that only 90% of the total funding comes from the property tax. In 2006, ten school districts had their RLE millage reduced due to this provision. Reductions varied from .4 mills in Indian River County to 3.568 mills in Walton County.

Tables 18 and 19 present similar FEFP calculations, but are based on a tax roll in which the SOH assessment growth limitation has been eliminated. Statewide, this adds \$404.4 billion, or 24.5%, to the tax roll. As a result, the statewide RLE millage that would collect the same total dollars specified in the General Appropriations Act is reduced 20.2% to 3.997 mills. Since the total dollar collection amount is the same, the effect of eliminating the Save Our Homes assessment limitation would result only in a redistribution of effort among counties. The amount of this redistribution by county in dollar and percentage terms can be seen in columns 11 and 12 of Table 20.

With regard to the level of assessment equalization factor, since it is based on a dollar amount calculated from the previous tax roll, there would be no difference in the revenue collected from each school district in 2006. In future years, however, the distribution of this amount would change in the same way as the distribution of the total RLE amount.

Table 10  
**2006-07 FEPP Second Calculation**  
**Required Local Effort, Equalization to Prior Year Assessment Levels**  
**Required Average Mills = 5.010**  
**Source: Florida Department of Education**

District	2005	2005	2005	2005-06	2006	2006-07	2006-07	
	School	2005	2005	Unequalized	School	Millage	Equalized	
	Taxable	Assessment	Equalization	RLE	Taxable	Rate	RLE	
	Value	Levels	Factors	Amount	Value	Adjustment	Mills	
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-
1 Alachua	9,675,417,960	96.8	0.011364	48,155,039	547,234	11,357,500,164	0.051	5.061
2 Baker	587,273,020	98.1	(0.002039)	2,922,887	(5,960)	699,206,345	(0.009)	5.001
3 Bay	12,673,450,592	94.3	0.038176	63,076,397	2,408,005	18,869,456,228	0.134	5.144
4 Bradford	681,685,195	100.1	(0.021978)	3,392,781	(74,567)	809,041,156	(0.097)	4.913
5 Brevard	31,028,487,900	99.2	(0.013105)	154,430,336	(2,023,810)	39,294,006,872	(0.054)	4.956
6 Broward	133,596,083,095	98.3	(0.004069)	664,914,385	(2,705,537)	158,690,637,790	(0.018)	4.992
7 Calhoun	279,385,618	102.3	(0.043011)	1,390,516	(59,807)	322,038,098	(0.195)	4.815
8 Charlotte	16,124,095,741	98.5	(0.006091)	80,250,431	(488,805)	24,321,071,778	(0.021)	4.989
9 Citrus	8,724,672,100	97.8	0.001022	43,423,129	44,378	11,637,462,135	0.004	5.014
10 Clay	7,482,833,967	97.7	0.002047	37,242,439	76,235	9,122,880,536	0.009	5.019
11 Collier	61,468,215,721	99.5	(0.016080)	305,930,383	(4,919,361)	77,238,074,548	(0.067)	4.943
12 Columbia	1,889,280,479	98.7	(0.008105)	9,403,043	(76,212)	2,314,067,974	(0.035)	4.975
13 Miami-Dade	176,848,473,603	98.0	(0.001020)	880,183,696	(897,787)	213,825,364,287	(0.004)	5.006
14 DeSoto	1,153,866,024	96.9	0.010320	5,742,849	59,266	1,758,121,481	0.035	5.045
15 Dixie	487,228,032	101.4	(0.034517)	2,424,958	(83,702)	591,757,218	(0.149)	4.861
16 Duval	45,840,730,147	99.4	(0.015091)	228,151,606	(3,443,036)	51,951,142,035	(0.070)	4.940
17 Escambia	11,613,884,200	95.0	0.030526	57,802,882	1,764,491	14,927,916,899	0.124	5.134
18 Flagler	7,932,905,478	96.2	0.017672	39,482,467	697,734	10,886,648,601	0.067	5.077
19 Franklin	3,338,590,113	101.8	(0.038310)	16,616,330	(636,572)	4,113,401,327	(0.163)	4.847
20 Gadsden	1,075,425,071	96.2	0.017672	5,352,444	94,588	1,236,476,463	0.081	5.091
21 Gilchrist	460,190,914	97.4	0.005133	2,290,393	11,757	570,275,461	0.022	5.032
22 Glades	560,473,719	103.9	(0.057748)	2,789,506	(161,088)	683,411,698	(0.248)	4.762
23 Gulf	2,653,137,446	102.1	(0.041136)	13,204,798	(543,193)	2,905,749,172	(0.197)	4.813
24 Hamilton	576,993,930	97.3	0.006166	2,871,728	17,707	663,890,212	0.028	5.038
25 Hardee	1,386,469,976	100.2	(0.022954)	6,900,530	(158,395)	1,556,504,727	(0.107)	4.903
26 Hendry	1,925,247,836	96.0	0.019792	9,582,055	189,648	2,823,903,339	0.071	5.081
27 Hernando	7,668,136,229	97.9	0.000000	38,164,697	0	9,901,079,038	0.000	5.010
28 Highlands	4,172,330,426	93.7	0.044824	20,765,897	930,811	5,840,455,726	0.168	5.178
29 Hillsborough	64,575,411,915	96.7	0.012410	321,395,054	3,988,513	78,793,903,491	0.053	5.063
30 Holmes	347,805,597	97.8	0.001022	1,731,046	1,769	424,269,500	0.004	5.014
31 Indian River	14,279,412,670	99.3	(0.014099)	71,069,351	(1,002,007)	17,930,192,137	(0.059)	4.951
32 Jackson	1,178,725,268	100.1	(0.021978)	5,866,575	(128,936)	1,349,707,707	(0.101)	4.909
33 Jefferson	436,094,313	101.4	(0.034517)	2,170,463	(74,918)	518,623,632	(0.152)	4.858
34 Lafayette	171,797,608	98.3	(0.004069)	855,045	(3,479)	213,297,993	(0.017)	4.993
35 Lake	14,297,179,504	100.2	(0.022954)	71,157,777	(1,633,356)	18,975,642,475	(0.091)	4.919
36 Lee	63,982,337,148	96.8	0.011364	318,443,291	3,618,790	89,502,215,901	0.043	5.053
37 Leon	12,662,323,180	94.4	0.037076	63,021,016	2,336,567	14,675,884,867	0.168	5.178
38 Levy	1,615,119,331	99.5	(0.016080)	8,038,530	(129,260)	2,346,565,082	(0.058)	4.952
39 Liberty	212,040,061	95.4	0.026205	1,055,334	27,655	249,946,513	0.116	5.126
40 Madison	515,584,258	97.9	0.000000	2,566,089	0	644,263,621	0.000	5.010
41 Manatee	24,776,838,775	99.2	(0.013105)	123,315,565	(1,616,050)	30,735,678,005	(0.055)	4.955
42 Marion	13,057,730,937	95.5	0.025131	64,988,980	1,633,238	17,429,268,825	0.099	5.109
43 Martin	17,698,917,926	100.1	(0.021978)	88,088,399	(1,936,007)	21,343,775,570	(0.095)	4.915
44 Monroe	21,688,844,165	98.6	(0.007099)	107,946,462	(766,312)	26,872,672,507	(0.030)	4.980
45 Nassau	5,954,234,993	97.3	0.006166	29,634,525	182,726	7,246,175,600	0.027	5.037
46 Okaloosa	13,607,497,614	94.4	0.037076	67,725,196	2,510,979	18,046,515,116	0.146	5.156
47 Okeechobee	1,856,688,966	98.0	(0.001020)	9,240,834	(9,426)	2,270,839,361	(0.004)	5.006
48 Orange	75,373,932,205	99.2	(0.013105)	375,139,829	(4,916,207)	92,367,603,422	(0.056)	4.954
49 Osceola	16,192,861,394	97.6	0.003074	80,592,681	247,742	21,989,200,577	0.012	5.022
50 Palm Beach	130,344,516,337	96.1	0.018730	648,731,175	12,150,735	161,252,193,452	0.079	5.089
51 Pasco	19,949,523,770	100.1	(0.021978)	99,289,777	(2,182,191)	25,750,555,212	(0.089)	4.921
52 Pinellas	62,890,342,232	97.1	0.008239	313,008,378	2,578,876	75,661,254,861	0.036	5.046
53 Polk	23,855,176,388	97.9	0.000000	118,728,406	0	30,014,236,274	0.000	5.010
54 Putnam	3,182,606,632	97.8	0.001022	15,839,992	16,188	3,963,942,355	0.004	5.014
55 St. Johns	17,464,649,690	97.4	0.005133	86,922,435	446,173	22,129,008,582	0.021	5.031
56 St. Lucie	17,680,678,583	96.6	0.013458	87,997,621	1,184,272	24,344,463,819	0.051	5.061
57 Santa Rosa	6,702,089,926	97.0	0.009278	33,356,637	309,483	8,709,973,431	0.037	5.047
58 Sarasota	46,469,418,881	101.6	(0.036417)	231,280,621	(8,422,546)	59,015,112,897	(0.150)	4.860
59 Seminole	24,116,900,198	98.1	(0.002039)	120,031,018	(244,743)	29,886,314,133	(0.009)	5.001
60 Sumter	3,409,984,352	94.3	0.038176	16,971,663	647,910	4,622,447,404	0.148	5.158
61 Suwannee	1,139,998,279	97.3	0.006166	5,673,828	34,985	1,512,757,217	0.024	5.034
62 Taylor	1,116,616,469	112.7	(0.131322)	5,557,456	(729,816)	1,264,231,366	(0.608)	4.402
63 Union	187,254,135	97.4	0.005133	931,973	4,784	203,099,015	0.025	5.035
64 Volusia	30,002,303,241	98.3	(0.004069)	149,322,963	(607,595)	38,380,036,066	(0.017)	4.993
65 Wakulla	1,158,819,798	95.9	0.020855	5,767,504	120,281	1,371,523,210	0.092	5.102
66 Walton	12,823,805,149	90.9	0.077008	63,824,719	4,915,014	16,515,893,518	0.313	5.323
67 Washington	652,227,331	103.5	(0.054106)	3,246,168	(175,637)	1,006,872,016	(0.184)	4.826
68 Washington Special	0	0.0	0.000000	0	0	0	0.000	0.000
69 FAMU Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
70 FAU Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
71 FSU Lab - Broward	0	0.0	0.000000	0	0	0	0.000	0.000
72 FSU Lab - Leon	0	0.0	0.000000	0	0	0	0.000	0.000
73 UF Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
74 Virtual School	0	0.0	0.000000	0	0	0	0.000	0.000
State	1,319,533,253,751	97.9		6,567,382,978	2,942,216	1,648,441,698,038		5.010

**Table 17**  
**2006-07 FEFP Second Calculation**  
**Required Local Effort, 90% Adjustment, Millage, and Total**  
**Source: Florida Department of Education**

District	2006	Unequalized	Gross	90%	Unequalized	Equalized	Less:	2006-07	2006-07
	Tax Roll	Required Local Effort	State & Local FEFP	Gross State & Local FEFP	RLE Amount Above 90% FEFP	or Average Millage	Millage to 90%	Adjusted RLE Millage	Total Required Local Effort
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-
1 Alachua	11,357,500,164	54,606,293	149,040,138	134,136,124	0	5.061	0	5.061	54,606,293
2 Baker	699,206,345	3,321,894	25,638,672	23,074,805	0	5.001	0	5.001	3,321,894
3 Bay	18,869,456,228	92,211,259	137,532,410	123,779,169	0	5.144	0	5.144	92,211,259
4 Bradford	809,041,156	3,776,078	19,796,730	17,817,057	0	4.913	0	4.913	3,776,078
5 Brevard	39,294,006,872	185,004,043	389,551,177	350,596,059	0	4.956	0	4.956	185,004,043
6 Broward	158,690,637,790	752,574,481	1,390,735,153	1,251,661,638	0	4.992	0	4.992	752,574,481
7 Calhoun	322,038,098	1,473,083	13,021,728	11,719,555	0	4.815	0	4.815	1,473,083
8 Charlotte	24,321,071,778	115,270,936	87,949,857	79,154,871	36,116,065	4.989	1.563	3.426	79,157,792
9 Citrus	11,637,462,135	55,432,723	79,511,709	71,560,538	0	5.014	0	5.014	55,432,723
10 Clay	9,122,880,536	43,498,351	190,121,829	171,109,646	0	5.019	0	5.019	43,498,351
11 Collier	77,238,074,548	362,698,412	240,917,353	216,825,618	145,872,794	4.943	1.988	2.955	216,826,585
12 Columbia	2,314,067,974	10,936,864	54,050,151	48,645,136	0	4.975	0	4.975	10,936,864
13 Miami-Dade	213,825,364,287	1,016,889,285	1,897,859,483	1,708,073,535	0	5.006	0	5.006	1,016,889,285
14 DeSoto	1,758,121,481	8,426,237	27,099,589	24,389,630	0	5.045	0	5.045	8,426,237
15 Dixie	591,757,218	2,732,705	11,269,112	10,142,201	0	4.861	0	4.861	2,732,705
16 Duval	51,951,142,035	243,806,710	672,743,984	605,469,586	0	4.940	0	4.940	243,806,710
17 Escambia	14,927,916,899	72,807,929	213,459,156	192,113,240	0	5.134	0	5.134	72,807,929
18 Flagler	10,886,648,601	52,507,939	60,768,136	54,691,322	0	5.077	0	5.077	52,507,939
19 Franklin	4,113,401,327	18,940,773	6,263,158	5,636,842	13,303,931	4.847	3.405	1.442	5,634,948
20 Gadsden	1,236,476,463	5,980,157	33,154,009	29,838,608	0	5.091	0	5.091	5,980,157
21 Gilchrist	570,275,461	2,726,145	16,006,539	14,405,885	0	5.032	0	5.032	2,726,145
22 Glades	683,411,698	3,091,686	7,386,914	6,648,223	0	4.762	0	4.762	3,091,686
23 Gulf	2,905,749,172	13,286,102	10,486,975	9,438,278	3,847,824	4.813	1.394	3.419	9,438,019
24 Hamilton	663,890,212	3,177,445	10,226,493	9,203,844	0	5.038	0	5.038	3,177,445
25 Hardee	1,556,504,727	7,249,966	26,195,145	23,575,631	0	4.903	0	4.903	7,249,966
26 Hendry	2,823,903,339	13,630,840	40,137,924	36,124,132	0	5.081	0	5.081	13,630,840
27 Hernando	9,901,079,038	47,124,186	114,574,927	103,117,434	0	5.010	0	5.010	47,124,186
28 Highlands	5,840,455,726	28,729,786	62,540,631	56,286,568	0	5.178	0	5.178	28,729,786
29 Hillsborough	78,793,903,491	378,986,857	1,031,669,734	928,502,761	0	5.063	0	5.063	378,986,857
30 Holmes	424,269,500	2,020,923	17,795,037	16,015,533	0	5.014	0	5.014	2,020,923
31 Indian River	17,930,192,137	84,333,762	86,131,717	77,518,545	6,815,217	4.951	0.4	4.551	77,520,289
32 Jackson	1,349,707,707	6,294,429	39,031,327	35,128,194	0	4.909	0	4.909	6,294,429
33 Jefferson	518,623,632	2,393,500	6,884,173	6,195,756	0	4.858	0	4.858	2,393,500
34 Lafayette	213,297,993	1,011,747	5,717,239	5,145,515	0	4.993	0	4.993	1,011,747
35 Lake	18,975,642,475	88,674,126	196,145,669	176,531,102	0	4.919	0	4.919	88,674,126
36 Lee	89,502,215,901	429,641,962	416,425,549	374,782,994	54,858,968	5.053	0.645	4.408	374,799,479
37 Leon	14,675,884,867	72,192,145	175,049,900	157,544,910	0	5.178	0	5.178	72,192,145
38 Levy	2,346,565,082	11,039,181	33,516,395	30,164,756	0	4.952	0	4.952	11,039,181
39 Liberty	249,946,513	1,217,165	8,544,405	7,689,965	0	5.126	0	5.126	1,217,165
40 Madison	644,263,621	3,066,373	16,481,381	14,833,243	0	5.010	0	5.010	3,066,373
41 Manatee	30,735,678,005	144,680,520	220,420,181	198,378,163	0	4.955	0	4.955	144,680,520
42 Marion	17,429,268,825	84,593,828	216,109,856	194,498,870	0	5.109	0	5.109	84,593,828
43 Martin	21,343,775,570	99,659,424	93,387,112	84,048,401	15,611,023	4.915	0.77	4.145	84,046,452
44 Monroe	26,872,672,507	127,134,614	43,090,582	38,781,524	88,353,090	4.980	3.461	1.519	38,778,610
45 Nassau	7,246,175,600	34,674,037	55,201,713	49,681,542	0	5.037	0	5.037	34,674,037
46 Okaloosa	18,046,515,116	88,395,440	155,983,009	140,384,708	0	5.156	0	5.156	88,395,440
47 Okceehobee	2,270,839,361	10,799,431	37,823,549	34,041,194	0	5.006	0	5.006	10,799,431
48 Orange	92,367,603,422	434,709,652	951,232,639	856,109,375	0	4.954	0	4.954	434,709,652
49 Osceola	21,989,200,577	104,908,277	271,857,027	244,671,324	0	5.022	0	5.022	104,908,277
50 Palm Beach	161,252,193,452	779,581,792	921,898,203	829,708,383	0	5.089	0	5.089	779,581,792
51 Pasco	25,750,555,212	120,382,558	341,013,819	306,912,437	0	4.921	0	4.921	120,382,558
52 Pinellas	75,661,254,861	362,697,357	580,381,999	522,343,799	0	5.046	0	5.046	362,697,357
53 Polk	30,014,236,274	142,852,758	479,988,607	431,989,746	0	5.010	0	5.010	142,852,758
54 Putnam	3,963,942,355	18,881,447	61,307,770	55,176,993	0	5.014	0	5.014	18,881,447
55 St. Johns	22,129,008,582	105,764,490	133,297,119	119,967,407	0	5.031	0	5.031	105,764,490
56 St. Lucie	24,344,463,819	117,046,965	189,454,293	170,508,864	0	5.061	0	5.061	117,046,965
57 Santa Rosa	8,709,973,431	41,761,274	123,989,584	111,590,626	0	5.047	0	5.047	41,761,274
58 Sarasota	59,015,112,897	272,472,776	225,680,084	203,112,076	69,360,700	4.860	1.237	3.623	203,121,166
59 Seminole	29,886,314,133	141,988,384	350,669,452	315,602,507	0	5.001	0	5.001	141,988,384
60 Sumter	4,622,447,404	22,650,455	37,149,193	33,434,274	0	5.158	0	5.158	22,650,455
61 Suwannee	1,512,757,217	7,234,459	28,319,077	25,487,169	0	5.034	0	5.034	7,234,459
62 Taylor	1,264,231,366	5,286,889	15,869,936	14,282,942	0	4.402	0	4.402	5,286,889
63 Union	203,099,015	971,473	12,155,417	10,939,875	0	5.035	0	5.035	971,473
64 Volusia	38,380,036,066	182,049,944	338,232,016	304,408,814	0	4.993	0	4.993	182,049,944
65 Wakulla	1,371,523,210	6,647,636	25,633,029	23,069,726	0	5.102	0	5.102	6,647,636
66 Walton	16,515,893,518	83,518,396	30,280,738	27,252,664	56,265,732	5.323	3.586	1.737	27,253,702
67 Washington	1,006,872,016	4,616,206	18,547,991	16,693,192	0	4.826	0	4.826	4,616,206
68 Washington Special	0	0	3,841,613	3,457,452	0	0.000	0	0.000	0
69 FAMU Lab School	0	0	3,011,624	2,710,462	0	0.000	0	0.000	0
70 FAU Lab School	0	0	3,847,463	3,462,717	0	0.000	0	0.000	0
71 FSU Lab - Broward	0	0	3,476,448	3,128,803	0	0.000	0	0.000	0
72 FSU Lab - Leon	0	0	9,065,643	8,159,079	0	0.000	0	0.000	0
73 UF Lab School	0	0	6,745,525	6,070,973	0	0.000	0	0.000	0
74 Virtual School	0	0	31,390,496	28,251,446	0	0.000	0	0.000	0
State	1,648,441,698,038	7,848,744,960	14,041,784,415	12,637,605,976	490,405,344				7,358,364,845

**Table 18**  
**Save Our Homes (SOH) Impact Analysis**  
**Calculation of RLE Millage when SOH Differential Added to 2006 Taxable Value**  
**Required Average Mills = 3.997**  
**Source: Florida Department of Education**

District	2005	2005 Assessment Levels	2005 Equalization Factors	2005-06 Unequalized RLE	Equalization Amount	2006	2006-07 Millage Rate Adjustment	2006-07 Equalized RLE Mills
	School Taxable Value					School Taxable Value (SOH Diff. Included)		
	-1-					-6-		
1 Alachua	9,675,417,960	96.8	0.011364	48,155,039	547,234	13,219,225,224	0.044	4.041
2 Baker	587,273,020	98.1	(0.002039)	2,922,887	(5,960)	827,424,713	(0.008)	3.989
3 Bay	12,673,450,592	94.3	0.038176	63,076,397	2,408,005	21,918,359,465	0.116	4.113
4 Bradford	681,685,195	100.1	(0.021978)	3,392,781	(74,567)	941,440,731	(0.083)	3.914
5 Brevard	31,028,487,900	99.2	(0.013105)	154,430,336	(2,023,810)	53,819,790,842	(0.040)	3.957
6 Broward	133,596,083,095	98.3	(0.004069)	664,914,385	(2,705,537)	211,507,754,165	(0.013)	3.984
7 Calhoun	279,385,618	102.3	(0.043011)	1,390,516	(59,807)	351,680,275	(0.179)	3.818
8 Charlotte	16,124,095,741	98.5	(0.006091)	80,250,431	(488,805)	29,547,036,351	(0.017)	3.980
9 Citrus	8,724,672,100	97.8	0.001022	43,423,129	44,378	14,139,226,295	0.003	4.000
10 Clay	7,482,833,967	97.7	0.002047	37,242,439	76,235	11,361,636,827	0.007	4.004
11 Collier	61,468,215,721	99.5	(0.016080)	305,930,383	(4,919,361)	92,936,160,555	(0.056)	3.941
12 Columbia	1,889,280,479	98.7	(0.008105)	9,403,043	(76,212)	2,658,921,655	(0.030)	3.967
13 Miami-Dade	176,848,473,603	98.0	(0.001020)	880,183,696	(897,787)	271,403,965,285	(0.003)	3.994
14 DeSoto	1,153,866,024	96.9	0.010320	5,742,849	59,266	2,086,948,494	0.030	4.027
15 Dixie	487,228,032	101.4	(0.034517)	2,424,958	(83,702)	653,957,698	(0.135)	3.862
16 Duval	45,840,730,147	99.4	(0.015091)	228,151,606	(3,443,036)	61,428,459,415	(0.059)	3.938
17 Escambia	11,613,884,200	95.0	0.030526	57,802,882	1,764,491	18,198,972,229	0.102	4.099
18 Flagler	7,932,905,478	96.2	0.017672	39,482,467	697,734	12,609,906,382	0.058	4.055
19 Franklin	3,338,590,113	101.8	(0.038310)	16,616,330	(636,572)	4,615,306,617	(0.145)	3.852
20 Gadsden	1,075,425,071	96.2	0.017672	5,352,444	94,588	1,417,923,059	0.070	4.067
21 Gilchrist	460,190,914	97.4	0.005133	2,290,393	11,757	670,719,033	0.018	4.015
22 Glades	560,473,719	103.9	(0.057748)	2,789,506	(161,088)	762,654,644	(0.222)	3.775
23 Gulf	2,653,137,446	102.1	(0.041136)	13,204,798	(543,193)	3,207,498,768	(0.178)	3.819
24 Hamilton	576,993,930	97.3	0.006166	2,871,728	17,707	701,899,029	0.027	4.024
25 Hardee	1,386,469,976	100.2	(0.022954)	6,900,530	(158,395)	1,652,108,680	(0.101)	3.896
26 Hendry	1,925,247,836	96.0	0.019792	9,582,055	189,648	3,174,629,489	0.063	4.060
27 Hernando	7,668,136,229	97.9	0.000000	38,164,697	0	12,188,542,656	0.000	3.997
28 Highlands	4,172,330,426	93.7	0.044824	20,765,897	930,811	7,080,197,706	0.138	4.135
29 Hillsborough	64,575,411,915	96.7	0.012410	321,395,054	3,988,513	98,957,529,654	0.042	4.039
30 Holmes	347,805,597	97.8	0.001022	1,731,046	1,769	463,753,183	0.004	4.001
31 Indian River	14,279,412,670	99.3	(0.014099)	71,069,351	(1,002,007)	21,736,306,897	(0.049)	3.948
32 Jackson	1,178,725,268	100.1	(0.021978)	5,866,575	(128,936)	1,448,625,323	(0.094)	3.903
33 Jefferson	436,094,313	101.4	(0.034517)	2,170,463	(74,918)	574,122,624	(0.137)	3.860
34 Lafayette	171,797,608	98.3	(0.004069)	855,045	(3,479)	252,575,124	(0.014)	3.983
35 Lake	14,297,179,504	100.2	(0.022954)	71,157,777	(1,633,356)	21,921,544,168	(0.078)	3.919
36 Lee	63,982,337,148	96.8	0.011364	318,443,291	3,618,790	106,020,658,051	0.036	4.033
37 Leon	12,662,323,180	94.4	0.037076	63,021,016	2,336,567	17,330,512,075	0.142	4.139
38 Levy	1,615,119,331	99.5	(0.016080)	8,038,530	(129,260)	2,845,231,532	(0.048)	3.949
39 Liberty	212,040,061	95.4	0.026205	1,055,334	27,655	279,654,719	0.104	4.101
40 Madison	515,584,258	97.9	0.000000	2,566,089	0	709,368,854	0.000	3.997
41 Manatee	24,776,838,775	99.2	(0.013105)	123,315,565	(1,616,050)	37,563,279,136	(0.045)	3.952
42 Marion	13,057,730,937	95.5	0.025131	64,988,980	1,633,238	20,789,220,018	0.083	4.080
43 Martin	17,698,917,926	100.1	(0.021978)	88,088,399	(1,936,007)	28,229,565,479	(0.072)	3.925
44 Monroe	21,688,844,165	98.6	(0.007099)	107,946,462	(766,312)	33,053,098,814	(0.024)	3.973
45 Nassau	5,954,234,993	97.3	0.006166	29,634,525	182,726	8,377,628,774	0.023	4.020
46 Okaloosa	13,607,497,614	94.4	0.037076	67,725,196	2,510,979	21,833,858,174	0.121	4.118
47 Okeechobee	1,856,688,966	98.0	(0.001020)	9,240,834	(9,426)	2,592,058,811	(0.004)	3.993
48 Orange	75,373,932,205	99.2	(0.013105)	375,139,829	(4,916,207)	107,403,379,443	(0.048)	3.949
49 Osceola	16,192,861,394	97.6	0.003074	80,592,681	247,742	24,545,764,604	0.011	4.008
50 Palm Beach	130,344,516,337	96.1	0.018730	648,731,175	12,150,735	209,037,506,037	0.061	4.058
51 Pasco	19,949,523,770	100.1	(0.021978)	99,289,777	(2,182,191)	32,493,297,257	(0.071)	3.926
52 Pinellas	62,890,342,232	97.1	0.008239	313,008,378	2,578,876	100,309,941,207	0.027	4.024
53 Polk	23,855,176,388	97.9	0.000000	118,728,406	0	35,496,422,447	0.000	3.997
54 Putnam	3,182,606,632	97.8	0.001022	15,839,992	16,188	4,597,252,180	0.004	4.001
55 St. Johns	17,464,649,690	97.4	0.005133	86,922,435	446,173	26,917,475,094	0.017	4.014
56 St. Lucie	17,680,678,583	96.6	0.013458	87,997,621	1,184,272	29,284,094,106	0.043	4.040
57 Santa Rosa	6,702,089,926	97.0	0.009278	33,356,637	309,483	10,627,762,050	0.031	4.028
58 Sarasota	46,469,418,881	101.6	(0.036417)	231,280,621	(8,422,546)	75,370,612,703	(0.118)	3.879
59 Seminole	24,116,900,198	98.1	(0.002039)	120,031,018	(244,743)	38,298,092,970	(0.007)	3.990
60 Sumter	3,409,984,352	94.3	0.038176	16,971,663	647,910	5,341,494,483	0.128	4.125
61 Suwannee	1,139,998,279	97.3	0.006166	5,673,828	34,985	1,824,023,226	0.020	4.017
62 Taylor	1,116,616,469	112.7	(0.131322)	5,557,456	(729,816)	1,343,287,145	(0.572)	3.425
63 Union	187,254,135	97.4	0.005133	931,973	4,784	227,494,441	0.022	4.019
64 Volusia	30,002,303,241	98.3	(0.004069)	149,322,963	(607,595)	49,428,144,571	(0.013)	3.984
65 Wakulla	1,158,819,798	95.9	0.020855	5,767,504	120,281	1,587,121,236	0.080	4.077
66 Walton	12,823,805,149	90.9	0.077008	63,824,719	4,915,014	17,562,515,384	0.295	4.292
67 Washington	652,227,331	103.5	(0.054106)	3,246,168	(175,637)	1,065,117,167	(0.174)	3.823
68 Washington Special	0	0.0	0.000000	0	0	0	0.000	0.000
69 FAMU Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
70 FAU Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
71 FSU Lab - Broward	0	0.0	0.000000	0	0	0	0.000	0.000
72 FSU Lab - Leon	0	0.0	0.000000	0	0	0	0.000	0.000
73 UF Lab School	0	0.0	0.000000	0	0	0	0.000	0.000
74 Virtual School	0	0.0	0.000000	0	0	0	0.000	0.000
State	1,319,533,253,751	97.9		6,567,382,978	2,942,216	2,052,821,735,443		3.997

**Table 19**  
**Save Our Homes (SOH) Impact Analysis**  
**Calculation of RLE Millage and Tax when SOH Differential Added to 2006 Taxable Value**  
**Source: Florida Department of Education**

District	2006	Unequalized	Gross	90%	Unequalized	Equalized	Less:	2006-07	2006-07
	Tax Roll (SOH Diff. Included)	Required Local Effort	State & Local FEFP	Gross State & Local FEFP	RLE Amount Above 90% FEFP	or Average Millage	Millage to 90%	Adjusted RLE Millage	Total Required Local Effort
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-
1 Alachua	13,219,225,224	50,747,945	149,040,138	134,136,124	0	4.041	0	4.041	50,747,945
2 Baker	827,424,713	3,135,567	25,638,672	23,074,805	0	3.989	0	3.989	3,135,567
3 Bay	21,918,359,465	85,642,702	137,532,410	123,779,169	0	4.113	0	4.113	85,642,702
4 Bradford	941,440,731	3,500,559	19,796,730	17,817,057	0	3.914	0	3.914	3,500,559
5 Brevard	53,819,790,842	202,316,667	389,551,177	350,596,059	0	3.957	0	3.957	202,316,667
6 Broward	211,507,754,165	800,514,548	1,390,735,153	1,251,661,638	0	3.984	0	3.984	800,514,548
7 Calhoun	351,680,275	1,275,580	13,021,728	11,719,555	0	3.818	0	3.818	1,275,580
8 Charlotte	29,547,036,351	111,717,344	87,949,857	79,154,871	32,562,473	3.980	1.16	2.820	79,156,510
9 Citrus	14,139,226,295	53,729,060	79,511,709	71,560,538	0	4.000	0	4.000	53,729,060
10 Clay	11,361,636,827	43,217,394	190,121,829	171,109,646	0	4.004	0	4.004	43,217,394
11 Collier	92,936,160,555	347,948,338	240,917,353	216,825,618	131,122,720	3.941	1.485	2.456	216,838,650
12 Columbia	2,658,921,655	10,020,545	54,050,151	48,645,136	0	3.967	0	3.967	10,020,545
13 Miami-Dade	271,403,965,285	1,029,788,065	1,897,859,483	1,708,073,535	0	3.994	0	3.994	1,029,788,065
14 DeSoto	2,086,948,494	7,983,935	27,099,589	24,389,630	0	4.027	0	4.027	7,983,935
15 Dixie	653,957,698	2,399,305	11,269,112	10,142,201	0	3.862	0	3.862	2,399,305
16 Duval	61,428,459,415	229,810,010	672,743,984	605,469,586	0	3.938	0	3.938	229,810,010
17 Escambia	18,198,972,229	70,867,708	213,459,156	192,113,240	0	4.099	0	4.099	70,867,708
18 Flagler	12,609,906,382	48,576,512	60,768,136	54,691,322	0	4.055	0	4.055	48,576,512
19 Franklin	4,615,306,617	16,889,253	6,263,158	5,636,842	11,252,411	3.852	2.566	1.286	5,638,520
20 Gadsden	1,417,923,059	5,478,358	33,154,009	29,838,608	0	4.067	0	4.067	5,478,358
21 Gilchrist	670,719,033	2,558,290	16,006,539	14,405,885	0	4.015	0	4.015	2,558,290
22 Glades	762,654,644	2,735,070	7,386,914	6,648,223	0	3.775	0	3.775	2,735,070
23 Gulf	3,207,498,768	11,636,966	10,486,975	9,438,278	2,198,688	3.819	0.722	3.097	9,436,943
24 Hamilton	701,899,029	2,683,220	10,226,493	9,203,844	0	4.024	0	4.024	2,683,220
25 Hardee	1,652,108,680	6,114,785	26,195,145	23,575,631	0	3.896	0	3.896	6,114,785
26 Hendry	3,174,629,489	12,244,546	40,137,924	36,124,132	0	4.060	0	4.060	12,244,546
27 Hernando	12,188,542,656	46,281,725	114,574,927	103,117,434	0	3.997	0	3.997	46,281,725
28 Highlands	7,080,197,706	27,812,787	62,540,631	56,286,568	0	4.135	0	4.135	27,812,787
29 Hillsborough	98,957,529,654	379,704,989	1,031,669,734	928,502,761	0	4.039	0	4.039	379,704,989
30 Holmes	463,753,183	1,762,703	17,795,037	16,015,533	0	4.001	0	4.001	1,762,703
31 Indian River	21,736,306,897	81,524,193	86,131,717	77,518,545	4,005,648	3.948	0.194	3.754	77,518,191
32 Jackson	1,448,625,323	5,371,285	39,031,327	35,128,194	0	3.903	0	3.903	5,371,285
33 Jefferson	574,122,624	2,105,308	6,884,173	6,195,756	0	3.860	0	3.860	2,105,308
34 Lafayette	252,575,124	955,706	5,717,239	5,145,515	0	3.983	0	3.983	955,706
35 Lake	21,921,544,168	81,615,005	196,145,669	176,531,102	0	3.919	0	3.919	81,615,005
36 Lee	106,020,658,051	406,202,248	416,425,549	374,782,994	31,419,254	4.033	0.312	3.721	374,777,725
37 Leon	17,330,512,075	68,144,440	175,049,900	157,544,910	0	4.139	0	4.139	68,144,440
38 Levy	2,845,231,532	10,674,028	33,516,395	30,164,756	0	3.949	0	3.949	10,674,028
39 Liberty	279,654,719	1,089,521	8,544,405	7,689,965	0	4.101	0	4.101	1,089,521
40 Madison	709,368,854	2,693,580	16,481,381	14,833,243	0	3.997	0	3.997	2,693,580
41 Manatee	37,563,279,136	141,027,575	220,420,181	198,378,163	0	3.952	0	3.952	141,027,575
42 Marion	20,789,220,018	80,579,017	216,109,856	194,498,870	0	4.080	0	4.080	80,579,017
43 Martin	28,229,565,479	105,260,992	93,387,112	84,048,401	21,212,591	3.925	0.791	3.134	84,047,885
44 Monroe	33,053,098,814	124,753,964	43,090,582	38,781,524	85,972,440	3.973	2.738	1.235	38,779,548
45 Nassau	8,377,628,774	31,994,164	55,201,713	49,681,542	0	4.020	0	4.020	31,994,164
46 Okaloosa	21,833,858,174	85,416,237	155,983,009	140,384,708	0	4.118	0	4.118	85,416,237
47 Okeechobee	2,592,058,811	9,832,586	37,823,549	34,041,194	0	3.993	0	3.993	9,832,586
48 Orange	107,403,379,443	402,929,148	951,232,639	856,109,375	0	3.949	0	3.949	402,929,148
49 Osceola	24,545,764,604	93,460,453	271,857,027	244,671,324	0	4.008	0	4.008	93,460,453
50 Palm Beach	209,037,506,037	805,860,490	921,898,203	829,708,383	0	4.058	0	4.058	805,860,490
51 Pasco	32,493,297,257	121,190,251	341,013,819	306,912,437	0	3.926	0	3.926	121,190,251
52 Pinellas	100,309,941,207	383,464,843	580,381,999	522,343,799	0	4.024	0	4.024	383,464,843
53 Polk	35,496,422,447	134,785,240	479,988,607	431,989,746	0	3.997	0	3.997	134,785,240
54 Putnam	4,597,252,180	17,473,926	61,307,770	55,176,993	0	4.001	0	4.001	17,473,926
55 St. Johns	26,917,475,094	102,644,408	133,297,119	119,967,407	0	4.014	0	4.014	102,644,408
56 St. Lucie	29,284,094,106	112,392,353	189,454,293	170,508,864	0	4.040	0	4.040	112,392,353
57 Santa Rosa	10,627,762,050	40,668,194	123,989,584	111,590,626	0	4.028	0	4.028	40,668,194
58 Sarasota	75,370,612,703	277,744,476	225,680,084	203,112,076	74,632,400	3.879	1.042	2.837	203,135,107
59 Seminole	38,298,092,970	145,168,921	350,669,452	315,602,507	0	3.990	0	3.990	145,168,921
60 Sumter	5,341,494,483	20,931,982	37,149,193	33,434,274	0	4.125	0	4.125	20,931,982
61 Suwannee	1,824,023,226	6,960,746	28,319,077	25,487,169	0	4.017	0	4.017	6,960,746
62 Taylor	1,343,287,145	4,370,721	15,869,936	14,282,942	0	3.425	0	3.425	4,370,721
63 Union	227,494,441	868,585	12,155,417	10,939,875	0	4.019	0	4.019	868,585
64 Volusia	49,428,144,571	187,075,642	338,232,016	304,408,814	0	3.984	0	3.984	187,075,642
65 Wakulla	1,587,121,236	6,147,159	25,633,029	23,069,726	0	4.077	0	4.077	6,147,159
66 Walton	17,562,515,384	71,609,400	30,280,738	27,252,664	44,356,736	4.292	2.659	1.633	27,245,608
67 Washington	1,065,117,167	3,868,346	18,547,991	16,693,192	0	3.823	0	3.823	3,868,346
68 Washington Special	0	0	3,841,613	3,457,452	0	0.000	0	0.000	0
69 FAMU Lab School	0	0	3,011,624	2,710,462	0	0.000	0	0.000	0
70 FAU Lab School	0	0	3,847,463	3,462,717	0	0.000	0	0.000	0
71 FSU Lab - Broward	0	0	3,476,448	3,128,803	0	0.000	0	0.000	0
72 FSU Lab - Leon	0	0	9,065,643	8,159,079	0	0.000	0	0.000	0
73 UF Lab School	0	0	6,745,525	6,070,973	0	0.000	0	0.000	0
74 Virtual School	0	0	31,390,496	28,251,446	0	0.000	0	0.000	0
State	2,052,821,735,443	7,797,949,609	14,041,784,415	12,637,605,976	438,735,361				7,359,237,122

**Table 20**  
**Save Our Homes (SOH)**  
**Impact Analysis**  
**Source: Florida Department of Education**

District	2006 School Taxable Value				2006-07 RLE Millage Rate				2006-07 RLE			
	with SOH	without SOH	Diff (2 - 1)	% Diff (2 - 1)	with SOH	without SOH	Diff (6 - 5)	% Diff (6 - 5)	with SOH	without SOH	Diff (10 - 9)	% Diff (10 - 9)
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-	-10-	-11-	-12-
1 Alachua	11,357,500,164	13,219,225,224	1,861,725,060	16.39%	5.061	4.041	(1.020)	-20.15%	54,606,293	50,747,945	(3,858,348)	-7.07%
2 Baker	699,206,345	827,424,713	128,218,368	18.34%	5.001	3.989	(1.012)	-20.24%	3,321,894	3,135,567	(186,327)	-5.61%
3 Bay	18,869,456,228	21,918,359,465	3,048,903,237	16.16%	5.144	4.113	(1.031)	-20.04%	92,211,259	85,642,702	(6,568,557)	-7.12%
4 Bradford	809,041,156	941,440,731	132,399,575	16.36%	4.913	3.914	(0.999)	-20.33%	3,776,078	3,500,559	(275,519)	-7.30%
5 Brevard	39,294,006,872	53,819,790,842	14,525,783,970	36.97%	4.956	3.957	(0.999)	-20.16%	185,004,043	202,316,667	17,312,624	9.36%
6 Broward	158,690,637,790	211,507,754,165	52,817,116,375	33.28%	4.992	3.984	(1.008)	-20.19%	752,574,481	800,514,548	47,940,067	6.37%
7 Calhoun	322,038,098	351,680,275	29,642,177	9.20%	4.815	3.818	(0.997)	-20.71%	1,473,083	1,275,580	(197,503)	-13.41%
8 Charlotte	24,321,071,778	29,547,036,351	5,225,964,573	21.49%	3.426	2.820	(0.606)	-17.69%	79,157,792	79,156,510	(1,282)	0.00%
9 Citrus	11,637,462,135	14,139,226,295	2,501,764,160	21.50%	5.014	4.000	(1.014)	-20.22%	55,432,723	53,729,060	(1,703,663)	-3.07%
10 Clay	9,122,880,536	11,361,636,827	2,238,756,291	24.54%	5.019	4.004	(1.015)	-20.22%	43,498,351	43,217,394	(280,957)	-0.65%
11 Collier	77,238,074,548	92,936,160,555	15,698,086,007	20.32%	2.955	2.456	(0.499)	-16.89%	216,826,585	216,838,650	12,065	0.01%
12 Columbia	2,314,067,974	2,658,921,655	344,853,681	14.90%	4.975	3.967	(1.008)	-20.26%	10,936,864	10,020,545	(916,319)	-8.38%
13 Miami-Dade	213,825,364,287	271,403,965,285	57,578,600,998	26.93%	5.006	3.994	(1.012)	-20.22%	1,016,889,285	1,029,788,065	12,898,780	1.27%
14 DeSoto	1,758,121,481	2,086,948,494	328,827,013	18.70%	5.045	4.027	(1.018)	-20.18%	8,426,237	7,983,935	(442,302)	-5.25%
15 Dixie	591,757,218	653,957,698	62,200,480	10.51%	4.861	3.862	(0.999)	-20.55%	2,732,705	2,399,305	(333,400)	-12.20%
16 Duval	51,951,142,035	61,428,459,415	9,477,317,380	18.24%	4.940	3.938	(1.002)	-20.28%	243,806,710	229,810,010	(13,996,700)	-5.74%
17 Escambia	14,927,916,899	18,198,972,229	3,271,055,330	21.91%	5.134	4.099	(1.035)	-20.16%	72,807,929	70,867,708	(1,940,221)	-2.66%
18 Flagler	10,886,648,601	12,609,906,382	1,723,257,781	15.83%	5.077	4.055	(1.022)	-20.13%	52,507,939	48,576,512	(3,931,427)	-7.49%
19 Franklin	4,113,401,327	4,615,306,617	501,905,290	12.20%	1.442	1.286	(0.156)	-10.82%	5,634,948	5,638,520	3,572	0.06%
20 Gadsden	1,236,476,463	1,417,923,059	181,446,596	14.67%	5.091	4.067	(1.024)	-20.11%	5,980,157	5,478,358	(501,799)	-8.39%
21 Gilchrist	570,275,461	670,719,033	100,443,572	17.61%	5.032	4.015	(1.017)	-20.21%	2,726,145	2,558,290	(167,855)	-6.16%
22 Glades	683,411,698	762,654,644	79,242,946	11.60%	4.762	3.775	(0.987)	-20.73%	3,091,686	2,735,070	(356,616)	-11.53%
23 Gulf	2,905,749,172	3,207,498,768	301,749,596	10.38%	3.419	3.097	(0.322)	-9.42%	9,438,019	9,436,943	(1,076)	-0.01%
24 Hamilton	663,890,212	701,899,029	38,008,817	5.73%	5.038	4.024	(1.014)	-20.13%	3,177,445	2,683,220	(494,225)	-15.55%
25 Hardee	1,556,504,727	1,652,108,680	95,603,953	6.14%	4.903	3.896	(1.007)	-20.54%	7,249,966	6,114,785	(1,135,181)	-15.66%
26 Hendry	2,823,903,339	3,174,629,489	350,726,150	12.42%	5.081	4.060	(1.021)	-20.09%	13,630,840	12,244,546	(1,386,294)	-10.17%
27 Hernando	9,901,079,038	12,188,542,656	2,287,463,618	23.10%	5.010	3.997	(1.013)	-20.22%	47,124,186	46,281,725	(842,461)	-1.79%
28 Highlands	5,840,455,726	7,080,197,706	1,239,741,980	21.23%	5.178	4.135	(1.043)	-20.14%	28,729,786	27,812,787	(916,999)	-3.19%
29 Hillsborough	78,793,903,491	98,957,529,654	20,163,626,163	25.59%	5.063	4.039	(1.024)	-20.23%	378,986,857	379,704,989	718,132	0.19%
30 Holmes	424,269,500	463,753,183	39,483,683	9.31%	5.014	4.001	(1.013)	-20.20%	2,020,923	1,762,703	(258,220)	-12.78%
31 Indian River	17,930,192,137	21,736,306,897	3,806,114,760	21.23%	4.551	3.754	(0.797)	-17.51%	77,520,289	77,518,191	(2,098)	0.00%
32 Jackson	1,349,707,707	1,448,625,323	98,917,616	7.33%	4.909	3.903	(1.006)	-20.49%	6,294,429	5,371,285	(923,144)	-14.67%
33 Jefferson	518,623,632	574,122,624	55,498,992	10.70%	4.858	3.860	(0.998)	-20.54%	2,393,500	2,105,308	(288,192)	-12.04%
34 Lafayette	213,297,993	252,575,124	39,277,131	18.41%	4.993	3.983	(1.010)	-20.23%	1,011,747	955,706	(56,041)	-5.54%
35 Lake	18,975,642,475	21,921,544,168	2,945,901,693	15.52%	4.919	3.919	(1.000)	-20.33%	88,674,126	81,615,005	(7,059,121)	-7.96%
36 Lee	89,502,215,901	106,020,658,051	16,518,442,150	18.46%	4.408	3.721	(0.687)	-15.59%	374,799,479	374,777,725	(21,754)	-0.01%
37 Leon	14,675,884,867	17,330,512,075	2,654,627,208	18.09%	5.178	4.139	(1.039)	-20.07%	72,192,145	68,144,440	(4,047,705)	-5.61%
38 Levy	2,346,565,082	2,845,231,532	498,666,450	21.25%	4.952	3.949	(1.003)	-20.25%	11,039,181	10,674,028	(365,153)	-3.31%
39 Liberty	249,946,513	279,654,719	29,708,206	11.89%	5.126	4.101	(1.025)	-20.00%	1,217,165	1,089,521	(127,644)	-10.49%
40 Madison	644,263,621	709,368,854	65,105,233	10.11%	5.010	3.997	(1.013)	-20.22%	3,066,373	2,693,580	(372,793)	-12.16%
41 Manatee	30,735,678,005	37,563,279,136	6,827,601,131	22.21%	4.955	3.952	(1.003)	-20.24%	144,680,520	141,027,575	(3,652,945)	-2.52%
42 Marion	17,429,268,825	20,789,220,018	3,359,951,193	19.28%	5.109	4.080	(1.029)	-20.14%	84,593,828	80,579,017	(4,014,811)	-4.75%
43 Martin	21,343,775,570	28,229,565,479	6,885,789,909	32.26%	4.145	3.134	(1.011)	-24.39%	84,046,452	84,047,885	1,433	0.00%
44 Monroe	26,872,672,507	33,053,098,814	6,180,426,307	23.00%	1.519	1.235	(0.284)	-18.70%	38,778,610	38,779,548	938	0.00%
45 Nassau	7,246,175,600	8,377,628,774	1,131,453,174	15.61%	5.037	4.020	(1.017)	-20.19%	34,674,037	31,994,164	(2,679,873)	-7.73%
46 Okaloosa	18,046,515,116	21,833,858,174	3,787,343,058	20.99%	5.156	4.118	(1.038)	-20.13%	88,395,440	85,416,237	(2,979,203)	-3.37%
47 Okeechobee	2,270,839,361	2,592,058,811	321,219,450	14.15%	5.006	3.993	(1.013)	-20.24%	10,799,431	9,832,586	(966,845)	-8.95%
48 Orange	92,367,603,422	107,403,379,443	15,035,776,021	16.28%	4.954	3.949	(1.005)	-20.29%	434,709,652	402,929,148	(31,780,504)	-7.31%
49 Osceola	21,989,200,577	24,545,764,604	2,556,564,027	11.63%	5.022	4.008	(1.014)	-20.19%	104,908,277	93,460,453	(11,447,824)	-10.91%
50 Palm Beach	161,252,193,452	209,037,506,037	47,785,312,585	29.63%	5.089	4.058	(1.031)	-20.26%	779,581,792	805,860,490	26,278,698	3.37%
51 Pasco	25,750,555,212	32,493,297,257	6,742,742,045	26.18%	4.921	3.926	(0.995)	-20.22%	120,382,558	121,190,251	807,693	0.67%
52 Pinellas	75,661,254,861	100,309,941,207	24,648,686,346	32.58%	5.046	4.024	(1.022)	-20.25%	362,697,357	383,464,843	20,767,486	5.73%
53 Polk	30,014,236,274	35,496,422,447	5,482,186,173	18.27%	5.010	3.997	(1.013)	-20.22%	142,852,758	134,785,240	(8,067,518)	-5.65%
54 Putnam	3,963,942,355	4,597,252,180	633,309,825	15.98%	5.014	4.001	(1.013)	-20.20%	18,881,447	17,473,926	(1,407,521)	-7.45%
55 St. Johns	22,129,008,582	26,917,475,094	4,788,466,512	21.64%	5.031	4.014	(1.017)	-20.21%	105,764,490	102,644,408	(3,120,082)	-2.95%
56 St. Lucie	24,344,463,819	29,284,094,106	4,939,630,287	20.29%	5.061	4.040	(1.021)	-20.17%	117,046,965	112,392,353	(4,654,612)	-3.98%
57 Santa Rosa	8,709,973,431	10,627,762,050	1,917,788,619	22.02%	5.047	4.028	(1.019)	-20.19%	41,761,274	40,668,194	(1,093,080)	-2.62%
58 Sarasota	59,015,112,897	75,370,612,703	16,355,499,806	27.71%	3.623	2.837	(0.786)	-21.69%	203,121,166	203,135,107	13,941	0.01%
59 Seminole	29,886,314,133	38,298,092,970	8,411,778,837	28.15%	5.001	3.990	(1.011)	-20.22%	141,988,384	145,168,921	3,180,537	2.24%
60 Sumter	4,622,447,404	5,341,494,483	719,047,079	15.56%	5.158	4.125	(1.033)	-20.03%	22,650,455	20,931,982	(1,718,473)	-7.59%
61 Suwannee	1,512,757,217	1,824,023,226	311,266,009	20.58%	5.034	4.017	(1.017)	-20.20%	7,234,459	6,960,746	(273,713)	-3.78%
62 Taylor	1,264,231,366	1,343,287,145	79,055,779	6.25%	4.402	3.425	(0.977)	-22.19%	5,286,889	4,370,721	(916,168)	-17.33%
63 Union	203,099,015	227,494,441	24,395,426	12.01%	5.035	4.019	(1.016)	-20.18%	971,473	868,585	(102,888)	-10.59%
64 Volusia	38,380,036,066	49,428,144,571	11,048,108,505	28.79%	4.993	3.984	(1.009)	-20.21%	182,049,944	187,075,642	5,025,698	2.76%
65 Wakulla	1,371,523,210	1,587,121,236	215,598,026	15.72%	5.102	4.077	(1.025)	-20.09%	6,647,636	6,147,159	(500,477)	-7.53%
66 Walton	16,515,893,518	17,562,515,384	1,046,621,866	6.34%	1.737	1.633	(0.104)	-5.99%	27,253,702	27,245,608	(8,094)	-0.03%
67 Washington	1,006,872,016	1,065,117,167	58,245,151	5.78%	4.826	3.823	(1.003)	-20.78%	4,616,206	3,868,346	(747,860)	-16.20%
State	1,648,441,698,038	2,052,821,735,443	404,380,037,405	24.53%	5.010	3.997	(1.013)	-20.22%	7,358,364,845	7,359,237,122	872,277	0.01%

In general, the redistribution of the RLE among counties is proportional to the change in the roll due to eliminating the SOH assessment growth limitation. Counties in which the elimination of the SOH assessment growth limitation results in a change in taxable value greater than the statewide average would experience an increase in required local effort dollars levied and counties with a roll change less than the statewide average would see a reduction in their RLE contribution. This can be seen in a comparison of columns 4 and 12 in Table 20.

Exceptions to the general rule are the 10 counties in which the RLE millage is reduced to the rate that would collect only 90% of the total FEFP funds for the school district. These counties would see no change in the total property tax revenue contributed to the FEFP, but would see a reduction in the millage required due to the fact that the tax roll is now higher. Again, this reduction would be proportional to the taxable value added due to the elimination of the SOH assessment growth limitation. At least for 2006, the number of counties that qualify under the FEFP's 90% provision would not be changed as a result of eliminating the SOH assessment growth limitation.

## **VI. Fiscal Impact of Save Our Homes Portability**

The term "Save Our Homes portability" refers to the concept of allowing the Save Our Homes assessment differential to be transferred by the owner of one homesteaded property to another homesteaded property of the owner. Such transfers are not permitted under the current constitutional language establishing Save Our Homes assessments. Numerous "portability" proposed constitutional amendments have been offered in recent years. The Department of Revenue has worked closely with the Revenue Estimating Conference in the development of fiscal estimates on the impact of these proposals. For purposes of this report, the Department, continuing to work closely with the Revenue Estimating Conference, has undertaken a detailed study of the underlying data and assumptions associated with the portability estimates. The estimates and assumptions presented herein are a work in progress that will be completed when official estimates are adopted by the Conference.

**Scope of Work:** As discussed above, there have been many different proposals regarding Save Our Homes portability. While presenting a framework in which estimates on a wide variety of proposals can be made, this report will limit the estimates of the fiscal impacts to two major proposals:

1. "Pure" portability: The full dollar value of a homestead owner's assessment differential can be transferred to a subsequently purchased homestead, regardless of whether the new homestead has a higher or lower just value. For example, a homestead with a just value of \$300,000 and an assessed value of \$200,000 can transfer the full \$100,000 value of the differential to a newly purchased homestead. If the value of the new homestead is \$400,000, the new assessed value would be \$300,000. If the new homestead's value is \$180,000, the new assessed value would be \$80,000.

2. “Mixed” portability: The dollar value of a homestead owner’s assessment differential can be transferred to a subsequently purchased homestead if the new just value is higher than the previous homestead’s just value. However, if the new homestead’s just value is less than the previous one, only a portion of the differential can be transferred. This portion is calculated as the percentage of the new just value equal to the percentage that the differential on the previous homestead was of the previous just value. For example, a homestead with a just value of \$300,000 and an assessed value of \$200,000 can transfer the \$100,000 value to the next homestead if the new homestead’s just value is greater than \$300,000. If the new homestead’s value is less than \$300,000, the difference between the new just and assessed value will be the same percentage as for the previous homestead, in this example, 66.67%. If the new homestead’s value is \$180,000, the new assessed value would be \$120,000.

**Assumptions:** The following assumptions are crucial for estimating the impact of portability. As stated above, these assumptions have been developed in conjunction with the Revenue Estimating Conference but have not yet been adopted by the Conference.

1. **Turnover rate:** The most important assumption is the “turnover rate”. This represents the percentage of owners of homestead properties who move and buy another property in Florida which then becomes their homestead. It is this group of people who would be eligible to transfer their SOH differential under the various portability proposals. The turnover rate was calculated based on the parcel ID and social security number of the homestead owners as contained on tax rolls submitted to the Department by property appraisers. A homestead was considered “turned over” if the social security number of the new owner matched the social security number of the owner of a different homestead in either of the two previous years. Two years were allowed for the turnover determination because in many cases, especially for sales late in the year, owners do not buy their new home until the following year. This means the sale will have occurred in, for example, 2004 but the seller will not show on the tax roll as having bought a new homestead until 2006.

The table below presents the turnover rates calculated for 2002 through 2005. The turnover rate for homes sold in 2002 through 2004 averaged just above 3.5%. However, there was a steady decline from 2003 to 2005 in the number of homes purchased during the same year. Since data for homes purchased in the next year will not be available until the 2007 roll is submitted, alternative estimates for 2005 are presented. The first is based on the average of the previous three years. The second is calculated based on the rate of decline as for the previous years. Averaged together, this would yield an estimate of the turnover rate of about 3.25%. It is, of course, unknown whether this decline will continue or whether the rate will stabilize in the future.

Year of Sale of HX Homes	# of HX Homes bought w/in the year of sale	# of HX Homes bought w/in one years	Total # of HX homes w/ valid SSN's	Turn- over Rate
2002	98,474	47,107	3,948,404	3.69%
2003	103,156	45,509	3,812,383	3.90%
2004	90,470	48,029	4,018,394	3.45%
2005	83,188	na	3,948,404	Na
Average	93,822	46,882	3,931,896	3.68%

Alternative Estimates for 2005 Turnover Rate:

2005	83,188	46,882	3,948,404	3.29%
2005	83,188	44,163	3,948,404	3.23%

It should be noted that there are some, hopefully minor, shortcomings to the above methodology:

- a. The tax roll data does not distinguish between a SOH differential and an agricultural use differential. Therefore, homesteads that are located on parcels that are sold but continue to receive an agricultural use differential are not counted in the turnover rate calculation.
  - b. In instances where the homesteaded property is jointly owned by two people who subsequently separate, an over count may exist if both purchase a different homestead.
  - c. Similarly, an undercount may exist if two homestead owners living separately jointly purchase a new homestead. In these latter two cases, the fiscal impact would depend on the specific implementing legislation.
2. **Upsizing vs. downsizing:** Some basic portability proposals would only permit homestead owners to transfer a portion of their SOH differential when their new homestead is of lesser value. Based on an analysis of the tax roll data from 2002 through 2005, roughly 3 out of 4 owners of homesteaded properties purchasing a new homestead buy a more expensive one. At the same time, however, the SOH differential at the time of sale is only slightly higher for those that purchase more expensive homesteads versus those purchasing less expensive homesteads. The results of the Department's analysis with regard to these statistics are presented in the table below:

Year of Sale	New Home w/ Higher Just Value	New Home w/ Lower Just Value	Percent New Homes w/ Higher Just Value	Percent New Homes w/ Lower Just Value
2002	104,487	41,094	71.8%	28.2%
2003	108,866	39,799	73.2%	26.8%
2004	103,494	35,005	74.7%	25.3%
2005	61,732	21,456	74.2%	25.8%
Average			73.5%	26.5%
Year of Sale	SOH Differential	SOH Differential	SOH Differential	SOH Differential
2002	1,608,890,478	1,471,738,491	52.2%	47.8%
2003	2,366,517,972	2,007,853,498	54.1%	45.9%
2004	2,937,867,384	2,465,721,472	54.4%	45.6%
2005	2,480,869,928	2,141,295,370	53.7%	46.3%
Average	2,348,536,441	2,021,652,208	53.6%	46.4%

**Current Law Baseline Estimate for Homestead Properties:** To estimate the potential impacts of portability, the underlying property tax base for homesteaded property is estimated. The table below shows the major assumptions used in the forecast:

Tax Roll Year	Percent Sold	Percent Unsold	Change in CPI	Growth in Value	New Homes	Parcel Growth
2001						
2002			2.8%	8.1%	8.4%	
2003	6.4%	93.6%	1.6%	10.6%	6.3%	
2004	6.7%	93.3%	2.3%	12.1%	4.8%	
2005	7.1%	92.9%	2.7%	17.0%	3.9%	
2006	6.8%	93.2%	3.0%	25.2%	4.4%	
2007	5.3%	94.7%	3.0%	3.7%	4.3%	2.1%
2008	6.0%	94.0%	2.2%	4.0%	4.6%	2.1%
2009	6.5%	93.5%	2.0%	4.4%	4.7%	2.1%
2010	7.2%	92.8%	1.8%	4.7%	4.9%	2.1%
2011	7.1%	92.9%	1.8%	5.3%	4.9%	2.1%
2012	7.0%	93.0%	1.8%	5.2%	4.9%	2.1%
2013	6.9%	93.1%	1.9%	5.1%	4.9%	2.1%
2014	6.8%	93.2%	1.9%	5.0%	4.9%	2.1%
2015	6.7%	93.3%	1.9%	4.7%	4.9%	2.1%
2016	6.7%	93.3%	1.9%	4.7%	4.9%	2.1%

All homesteaded properties can be divided into two groups: those that sell in a given year and those that do not. Based on historical averages, the Revenue Estimating Conference (REC) adopted an estimate of 6.7% of homesteaded properties which sell every year.

The REC also adopted a much lower long run growth rate of 4.7% for the just value increases of homesteaded properties. The just value growth attributable to new homes was estimated to be 4.9% of the previous year's just value. Based on historical averages, the Department estimates a 2.1% growth rate in homestead parcels.

**Portability Estimates:**

1. "Full" Portability: For full portability, the following assumptions were used in calculating the estimate:

<b>Assumptions:</b>	
<b>Percent of homestead properties sold</b>	<b>6.7%</b>
<b>Percent of homestead properties unsold</b>	<b>93.3%</b>
<b>Percent of sales portability eligible</b>	<b>50%</b>
<b>Portability allowance:</b>	<b>100%</b>

These resulted in the estimates presented in the table below:

	Reduction in Taxable Value	Tax Impact at 19.6 mills
<b>2008</b>	\$ (13,603,219,767)	(266,623,107.43)
<b>2009</b>	\$ (26,812,389,308)	(525,522,830.44)
<b>2010</b>	\$ (39,852,551,744)	(781,110,014.17)
<b>2011</b>	\$ (52,408,088,113)	(1,027,198,527.01)
<b>2012</b>	\$ (65,001,494,478)	(1,274,029,291.77)

	Total Taxable Value REC – Nov. 2006	Official REC Growth Rates	Change as % of Tax Base
<b>2007</b>	\$ 1,795,449,000,000	9.2%	
<b>2008</b>	\$ 1,936,479,000,000	7.9%	-0.7%
<b>2009</b>	\$ 2,098,129,000,000	8.3%	-1.3%
<b>2010</b>	\$ 2,280,667,000,000	8.7%	-1.7%
<b>2011</b>	\$ 2,488,898,000,000	9.1%	-2.1%
<b>2012</b>	\$ 2,729,348,000,000	9.7%	-2.4%

Full portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$13.6 billion in the first year. This reduction in taxable value would grow to \$65.0 billion in the fifth year. At the 2005 average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues of \$267 million in 2008 and \$1.3 billion in 2012, if millage rates are held constant. During these five years, the tax base reduction would increase from 0.7% in 2008 to 2.4% in 2012.

2. "Mixed" Portability: For the mixed portability estimates, the following assumptions were used.

<b>Assumptions:</b>	
<b>Percent of homestead properties sold</b>	<b>6.7%</b>
<b>Percent of homestead properties unsold</b>	<b>93.3%</b>
<b>Percent of sales portability eligible</b>	<b>50%</b>
<b>Portability: Upsizing</b>	<b>54%</b>
<b>Portability: Downsizing</b>	<b>46%</b>
<b>Portability allowance:</b>	<b>100%</b>
<b>Diminished effect of downsizing:</b>	<b>62.5%</b>

These resulted in the estimates presented in the table below:

	Reduction in Taxable Value	Tax Impact at 19.6 mills
<b>2008</b>	\$ (11,256,664,357)	(220,630,621.40)
<b>2009</b>	\$ (22,187,252,153)	(434,870,142.19)
<b>2010</b>	\$ (32,977,986,568)	(646,368,536.73)
<b>2011</b>	\$ (43,367,692,913)	(850,006,781.10)
<b>2012</b>	\$ (53,788,736,681)	(1,054,259,238.94)

	Total Taxable Value REC – Nov. 2006	Official REC Growth Rates	Change as % of Tax Base
<b>2007</b>	\$ 1,795,449,000,000	9.2%	
<b>2008</b>	\$ 1,936,479,000,000	7.9%	-0.6%
<b>2009</b>	\$ 2,098,129,000,000	8.3%	-1.1%
<b>2010</b>	\$ 2,280,667,000,000	8.7%	-1.4%
<b>2011</b>	\$ 2,488,898,000,000	9.1%	-1.7%
<b>2012</b>	\$ 2,729,348,000,000	9.7%	-2.0%

Mixed portability, if implemented with the 2008 roll, would reduce the ad valorem tax base by \$11.2 billion in the first year. This reduction in taxable value would grow to \$53.8 billion in the fifth year. At the 2005 average weighted millage of 19.6 mills, these tax base reductions would amount to reduced revenues of \$221 million in 2008 and \$1.1 billion in 2012, if millage rates are held constant. During these five years, the tax base reduction would increase from 0.6% in 2008 to 2.0% in 2012.

## VII. Local Government TRIM Analysis

Table 21 presents data on taxes levied by school and non-school taxing jurisdictions from 1974 to 2006. Taxes levied include both operating and debt service levies from all taxing jurisdictions. Millage rates are calculated as a weighted average. The rolled-back rates included in the table are calculated from the statewide data but, because debt service levies are included, are not strictly according to the definition in statute. However, because debt service levies commonly show a large increase in the initial year of levy but in subsequent years are reduced to only raise the amount needed for the bond payments,

**Table 21**  
**Taxes Levied and Millage Rates 1974 - 2006**  
**Florida Taxing Jurisdictions by Type**

	All Jurisdictions					Non-Public School Levies					Public School Levies				
	Taxes Levied (1)	% Increase (2)	Actual Millage (3)	Rolled Back Rate (4)	% Actual Over/Under RBR (5)	Taxes Levied (6)	% Increase (7)	Actual Millage (8)	Rolled Back Rate (9)	% Actual Over/Under RBR (10)	Taxes Levied (11)	% Increase (12)	Actual Millage (13)	Rolled Back Rate (14)	% Actual Over/Under RBR (15)
1974	1,489,062,250	11.5%	18.32	17.77	3.1%	848,142,604	16.6%	10.44	9.68	7.9%	640,919,646	5.4%	7.89	8.09	-2.6%
1975	1,747,814,709	17.4%	19.39	17.67	9.8%	984,902,975	16.1%	10.93	10.06	8.6%	762,911,734	19.0%	8.47	7.60	11.3%
1976	1,920,110,925	9.9%	19.50	18.49	5.5%	1,092,277,175	10.9%	11.09	10.42	6.5%	827,833,750	8.5%	8.41	8.07	4.2%
1977	2,156,794,922	12.3%	20.01	18.36	9.0%	1,254,769,643	14.9%	11.64	10.44	11.5%	902,025,279	9.0%	8.37	7.91	5.8%
1978	2,291,733,049	6.3%	19.48	19.09	2.0%	1,329,757,811	6.0%	11.30	11.11	1.8%	961,975,238	6.6%	8.18	7.98	2.4%
1979	2,349,081,616	2.5%	18.42	18.65	-1.2%	1,455,555,954	9.5%	11.41	10.82	5.5%	893,525,662	-7.1%	7.00	7.83	-10.5%
1980	2,958,028,401	25.9%	19.99	16.63	20.2%	1,821,337,439	25.1%	12.31	10.31	19.4%	1,136,690,962	27.2%	7.68	6.33	21.4%
1981	3,582,734,590	21.1%	18.54	16.18	14.6%	2,164,874,128	18.9%	11.20	9.96	12.4%	1,417,860,462	24.7%	7.34	6.22	18.0%
1982	3,694,615,402	3.1%	16.30	16.56	-1.5%	2,202,505,988	1.7%	9.72	10.01	-2.9%	1,492,109,434	5.2%	6.58	6.55	0.5%
1983	4,217,028,491	14.1%	17.32	15.79	9.7%	2,518,383,280	14.3%	10.34	9.41	9.9%	1,698,645,211	13.8%	6.98	6.38	9.4%
1984	4,579,282,455	8.6%	17.21	16.44	4.7%	2,679,498,096	6.4%	10.07	9.82	2.5%	1,899,784,359	11.8%	7.14	6.62	7.8%
1985	5,111,132,535	11.6%	17.27	16.09	7.3%	2,951,652,033	10.2%	9.97	9.41	5.9%	2,159,480,502	13.7%	7.29	6.68	9.3%
1986	5,846,398,555	14.4%	18.11	16.54	9.5%	3,399,677,025	15.2%	10.53	9.55	10.2%	2,446,721,530	13.3%	7.58	6.99	8.4%
1987	6,631,899,157	13.4%	18.82	17.31	8.7%	3,921,874,686	15.4%	11.13	10.06	10.6%	2,710,024,471	10.8%	7.69	7.24	6.2%
1988	7,367,536,253	11.1%	19.45	18.24	6.7%	4,360,034,090	11.2%	11.51	10.78	6.7%	3,007,502,163	11.0%	7.94	7.45	6.6%
1989	8,500,379,961	15.4%	20.50	18.46	11.1%	4,901,332,213	12.4%	11.82	10.92	8.2%	3,599,047,748	19.7%	8.68	7.53	15.2%
1990	9,500,332,611	11.8%	21.15	19.59	8.0%	5,429,491,137	10.8%	12.09	11.30	7.0%	4,070,841,474	13.1%	9.06	8.30	9.3%
1991	9,982,353,757	5.1%	20.90	20.50	2.0%	5,578,192,190	2.7%	11.68	11.72	-0.3%	4,404,161,567	8.2%	9.22	8.79	5.0%
1992	10,199,375,366	2.2%	21.13	21.15	-0.1%	5,696,184,538	2.1%	11.80	11.82	-0.1%	4,503,190,828	2.2%	9.33	9.33	0.0%
1993	10,631,243,125	4.2%	21.65	21.17	2.3%	5,985,718,735	5.1%	12.19	11.82	3.1%	4,645,524,390	3.2%	9.46	9.35	1.2%
1994	11,244,028,512	5.8%	21.85	21.18	3.2%	6,212,511,985	3.8%	12.07	11.92	1.2%	5,031,516,527	8.3%	9.78	9.25	5.6%
1995	11,691,349,616	4.0%	21.78	21.44	1.5%	6,452,091,621	3.9%	12.02	11.85	1.4%	5,239,257,995	4.1%	9.76	9.60	1.7%
1996	12,294,465,465	5.2%	21.91	21.40	2.4%	6,742,333,350	4.5%	12.01	11.81	1.7%	5,552,132,115	6.0%	9.89	9.59	3.2%
1997	12,885,218,441	4.8%	21.66	21.22	2.1%	7,186,880,086	6.6%	12.08	11.64	3.8%	5,698,338,355	2.6%	9.58	9.58	0.0%
1998	13,631,308,237	5.8%	21.56	20.94	3.0%	7,596,072,287	5.7%	12.02	11.68	2.9%	6,035,235,950	5.9%	9.55	9.26	3.1%
1999	14,293,756,120	4.9%	21.10	20.72	1.8%	8,178,473,705	7.7%	12.08	11.55	4.6%	6,115,282,415	1.3%	9.03	9.18	-1.6%
2000	15,293,717,243	7.0%	20.96	20.19	3.8%	8,787,541,759	7.4%	12.04	11.55	4.2%	6,506,175,484	6.4%	8.92	8.64	3.2%
2001	16,681,826,393	9.1%	20.72	19.60	5.7%	9,607,555,121	9.3%	11.94	11.26	6.0%	7,074,271,272	8.7%	8.79	8.34	5.4%
2002	18,209,516,216	9.2%	20.57	19.49	5.6%	10,559,408,223	9.9%	11.93	11.22	6.3%	7,650,107,993	8.1%	8.64	8.26	4.6%
2003	20,297,761,858	11.5%	20.60	19.08	8.0%	11,879,716,334	12.5%	12.06	11.06	9.0%	8,418,045,524	10.0%	8.54	8.02	6.6%
2004	22,415,176,965	10.4%	20.18	18.87	6.9%	13,291,890,534	11.9%	11.97	11.04	8.4%	9,123,286,431	8.4%	8.21	7.83	5.0%
2005	25,699,660,431	14.7%	19.60	17.66	11.0%	15,332,443,338	15.4%	11.69	10.47	11.7%	10,367,217,093	13.6%	7.91	7.19	10.0%
2006	30,454,725,795	18.5%	18.47	16.14	14.4%	18,152,946,026	18.4%	11.01	9.63	14.3%	12,301,779,769	18.7%	7.46	6.51	14.6%

A 1979 - Legislature reduced school required local effort to provide tax relief and to rebalance state and local funding shares.  
 B 1980 - TRIM legislation enacted. Homestead exemption for school taxes raised from \$5,000 to \$25,000. Homestead exemption for non-school taxes raised from \$5,000 to \$15,000.  
 C 1980 - Legislature imposed 8% cap on city, county and special district property tax increases. May be overridden by majority plus one vote of governing body.  
 D 1981 - Homestead exemption for non-school taxes raised from \$15,000 to \$20,000.  
 E 1982 - Legislature imposed cap on city and county millages due to increased sales tax revenue sharing. Cap, generally, equal to the rolled back rate minus dollars equal to expected revenue from sales tax.  
 F 1982 and thereafter - Homestead exemption for non-school taxes raised from \$20,000 to \$25,000  
 G 1995 - Save Our Homes citizens constitutional amendment adopted in 1992 first impacts the tax roll.  
 H 1999 - Legislature adopts .42 mill reduction in the school required local effort to provide tax relief.

Note: Tax levy, millage and rolled-back rate information includes both operating and debt service levies.

**Table 22**  
**Percent Increase in Taxes Levied Allowed Under Rolled-Back Rate**  
**1974 - 2006**

	Taxable Value	New Construction	% Increase In Taxes Levied Allowed Under Rolled-Back Rate
1974	81,262,609,759	6,117,577,542	8.1%
1975	90,123,837,311	5,834,179,570	6.9%
1976	98,472,436,732	3,932,714,089	4.2%
1977	107,774,941,095	3,172,723,091	3.0%
1978	117,654,233,056	4,667,908,570	4.1%
1979	127,558,180,383	4,667,908,570	3.8%
1980	148,001,921,409	6,765,763,559	4.8%
1981	193,294,996,578	10,480,663,145	5.7%
1982	226,613,433,780	10,262,486,319	4.7%
1983	243,493,977,991	9,494,059,841	4.1%
1984	266,127,205,941	9,169,227,032	3.6%
1985	296,038,391,464	12,288,286,593	4.3%
1986	322,911,815,982	12,023,409,118	3.9%
1987	352,410,756,034	13,247,461,985	3.9%
1988	378,120,253,152	13,053,359,591	3.6%
1989	413,319,481,553	13,283,456,318	3.3%
1990	449,090,832,444	13,453,786,209	3.1%
1991	475,097,131,780	11,891,024,006	2.6%
1992	479,972,405,943	9,019,505,770	1.9%
1993	488,623,956,960	8,426,028,460	1.8%
1994	511,827,537,933	11,653,367,313	2.3%
1995	535,608,626,220	11,529,101,016	2.2%
1996	559,202,016,807	12,532,359,957	2.3%
1997	592,850,840,886	13,388,871,936	2.3%
1998	630,754,819,381	16,397,517,409	2.7%
1999	675,635,635,204	19,465,934,876	3.0%
2000	729,705,531,194	21,483,071,663	3.0%
2001	804,905,843,592	24,914,097,757	3.2%
2002	885,107,267,260	28,665,165,887	3.3%
2003	985,299,937,144	30,664,558,687	3.2%
2004	1,110,743,583,523	34,991,468,068	3.3%
2005	1,315,193,484,802	43,443,105,847	3.4%
2006	1,648,658,586,195	56,739,468,652	3.6%

on a statewide basis it is thought that these effects offset and do not appreciably bias the rolled-back rate calculation.

The rolled-back rate is the millage that would raise the same revenues as in the previous year when levied on the current year's tax roll less new construction. Thus, levying the rolled-back rate should yield revenues approximately equal to the previous year's revenues plus a percentage increase equal to the percent of new construction on the current year roll. Statewide new construction is displayed in Table 22 along with the percentage increase in taxes levied that would be allowed under the rolled-back rate for each year. For the 33 year period from 1974 to 2006, Florida taxing jurisdictions as a whole levied below the rolled-back rate in three years (see Table 21, column (5)). These included 1979, a year in which the Legislature provided a substantial reduction in public school required local effort millage, 1982, a year in which the Legislature imposed millage caps on city and county governments due to new distributions of sales tax moneys, and 1992, a year affected by the economic downturn in the early 1990's. For the entire period, local taxing jurisdictions levied millages that were an average of 6.1% above the rolled-back rate. For public school levies, this average was 5.8% and for the levies of all other taxing jurisdictions, 6.4%.

Tables 23, 24 and 25 display data based on millage levies and rolled-back rates for the years 2001 through 2005. Only non-voted, taxing jurisdiction-wide levies are included in the analysis. Table 23 is for counties, Table 24 for cities and Table 25 for school districts. Data displayed include the statewide weighted average millage rate and rolled-back rate, the number of jurisdictions with millage levies under, the same as, or over the previous year's levy, and counts of jurisdictions by percentage categories levying over or under the rolled-back rate. Appendices A, B and C display the data on which these tables are based. For each city, county and school district for the years 2001 through 2005, the data displayed include the previous year's millage, the current year's proposed millage, the rolled-back rate, the adopted millage, taxable value and taxes levied.

## **VIII. Data Sources**

Three primary data sources were used in preparing this report. First, individual parcel data used in the roll approval process are reported to the Department in a format provided by rule. These data, constituting about 9 million records statewide each year, were used for estimating fiscal impacts of allowing the Save Our Homes differential to be transferred to newly acquired homesteads. The data is available for the years 1999 through 2006. A master parcel ID consistent from year to year has been assigned to each parcel to allow individual parcels to be tracked over time.

Second, property appraisers and tax collectors are required to file a series of "recapitulation" reports summarizing various data on the tax rolls. These reports summarize data on the tax rolls submitted to the Department and also include summaries of data not available from the limited data set reported to the Department for roll approval. Tax roll data from the "recapitulation" reports form the basis for the report's analyses of the distribution of value across property types, both by county and statewide.

**Table 23**  
**County Operating Millage Rates 2001 - 2005**  
**Levied Rates Compared to Previous Year and Rolled-Back Rate**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<b>Statewide</b>					
Agregate Millage Rate	6.1060	6.0887	6.0474	5.9631	5.8089
Agregate Rolled-Back Rate	5.7565	5.7342	5.6278	5.5363	5.1898
Difference: Actual over Rolled-Back					
Mills	0.3495	0.6545	0.4196	0.4268	0.6191
Percent	6.1%	6.2%	7.5%	7.7%	11.9%
<b>Number of Counties</b>					
<b>with Millage Levies .....</b>					
Under Previous Year	19	17	16	24	32
Same as Previous Year	37	39	42	40	33
Over Previous Year	11	11	9	3	2
<b>Numbers of Counties</b>					
<b>with Actual over Rolled-Back % Dif. ...</b>					
<= -10%	0	0	0	0	0
<= -5% and > -10%	1	0	0	1	0
<= 0% and > -5%	2	6	3	1	3
> 0% and <= 5%	25	34	25	25	9
>= 5% and < 10%	25	15	24	27	18
>= 10%	14	12	15	13	37
Total	67	67	67	67	67
<b>County Taxable Value</b>					
Value (billions \$)	802.2	882.2	983.2	1,105.9	1,314.4
% Change	10.3%	10.0%	11.5%	12.5%	18.8%

**Table 24**  
**City Operating Millage Rates 2001 - 2005**  
**Levied Rates Compared to Previous Year and Rolled-Back Rate**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<b>Statewide</b>					
Agregate Millage Rate	4.8504	4.8545	4.8543	4.8879	4.7985
Agregate Rolled-Back Rate	4.4905	4.5015	4.4447	4.4061	4.2288
Difference: Actual over Rolled-Back					
Mills	0.3599	0.3530	0.4096	0.4818	0.5697
Percent	8.0%	7.8%	9.2%	10.9%	13.5%
<b>Number of Cities</b>					
<b>with Millage Levies .....</b>					
Under Previous Year	93	79	91	81	117
Same as Previous Year	204	213	210	226	211
Over Previous Year	72	79	70	65	46
<b>Numbers of Cities</b>					
<b>with Actual over Rolled-Back % Dif. ...</b>					
<= -10%	6	5	4	6	4
<= -5% and > -10%	3	1	2	3	1
<= 0% and > -5%	16	15	12	14	10
> 0% and <= 5%	135	122	111	93	58
>= 5% and < 10%	120	122	119	114	87
>= 10%	89	106	123	142	214
Total	369	371	371	372	374
<b>City Taxable Value</b>					
Value (billions \$)	403.1	449.6	500.9	565.2	676.8
% Change	na	11.5%	11.4%	12.8%	19.7%

**Table 25**  
**School District Operating Millage Rates 2001 - 2005**  
**Levied Rates Compared to Previous Year and Rolled-Back Rate**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<b>Statewide</b>					
Agregate Millage Rate	8.3554	8.3202	8.1474	7.8988	7.7022
Agregate Rolled-Back Rate	7.9674	7.8067	7.6855	7.4560	6.8216
Difference: Actual over Rolled-Back					
Mills	0.3880	0.5136	0.4618	0.4428	0.8806
Percent	4.9%	6.6%	6.0%	5.9%	12.9%
<b>Number of School Districts</b>					
<b>with Millage Levies .....</b>					
Under Previous Year	52	39	51	59	62
Same as Previous Year	2	0	0	1	0
Over Previous Year	13	28	16	7	5
<b>Numbers of School Districts</b>					
<b>with Actual over Rolled-Back % Dif. ...</b>					
<= -10%	2	0	0	1	2
<= -5% and > -10%	1	3	1	1	1
<= 0% and > -5%	4	9	8	9	3
> 0% and <= 5%	30	25	27	28	13
>= 5% and < 10%	25	20	20	21	14
>= 10%	5	10	11	7	34
Total	67	67	67	67	67
<b>School Taxable Value</b>					
Value (billions \$)	804.9	885.1	987.3	1,110.8	1,315.2
% Change	10.3%	10.0%	11.5%	12.5%	18.4%

This data is published each year in the Department's Florida Property Valuations and Tax Data, usually referred to as the Databook. A total of 382 variables are available from these reports. Appendix D contains a copy of this data file for Alachua County for the years 2005 and 2006. This copy includes a list of all variables and the specific "recapitulation" form they came from. Appendix E contains a copy of each report form, again for Alachua County, in 2006. Data for the years 1997 through 2006 were available directly from the Department's current computer files. Data from 1981 through 1996 were available from previous data files provided to the Revenue Estimating Conference. These data have been combined into a single spreadsheet covering all counties for the period from 1981 through 2006. Additionally, the data were improved by correcting errors, filling-in missing data and, in some cases, estimating missing or incorrect data based on trends in previous and following years. Information appearing in the tables for years prior to 1981 was copied from statewide totals in printed issues of the Databook.

The third source of data for this report is the preliminary and final TRIM packages submitted to the Department for compliance determination by the individual taxing authorities. From these packages the Department inputs the previous year's millage rate, the proposed millage rate, the rolled-back rate, and the adopted millage rate. These millage rates have been combined with taxable value data from the recapitulation reports for each city, county and school district to calculate statewide weighted average millage rates for the respective governments. Appendix A, B and C display these millages for each city, county and school district for the years 2001 through 2005.

Additional input has been provided by the Department of Education. In order to analyze the effects of Save Our Homes on the distribution of school taxes, at the request of the Department of Revenue the Department of Education recalculated the 2006 tax levy portions of the Florida Education Finance Program using a tax roll with the Save Our Homes differential eliminated.

Special note should be made of adjustments made to residential and non-residential property values. Property values as reported on the recapitulation forms are divided between residential and non-residential based on use code groupings. Residential property includes use codes for single family, mobile home, multi-family, condominium, cooperative and retirement homes. However, the use code for any given parcel is based on the predominate use of the property. For some property, a portion of the parcel may be used as a residence while the primary use is non-residential. Examples would include a farm included under an agricultural use code and a store front with a residence upstairs included under a commercial use code. To the extent that such residential uses exist on parcels coded as non-residential, the residential value would be understated.

Similarly, value from parcels receiving the homestead exemption is recorded as homestead value for the full parcel value even though only a portion may be used as a homestead. The homestead value of a large farm would include the full value of the farm along with any residential portion. Thus, in the homestead value as reported on the recapitulation forms there is some homestead value that is not included in residential

value (because it is not under a residential use code) and there is some non-residential value that should not be reported as residential even though it is recorded as a homestead.

For purposes of adjusting those tables in this report differentiating residential from non-residential property, data was derived from the full parcel by parcel tax rolls recording homestead value and parcel counts by use code. Data was available on a county by county basis for the 2002 – 2006 tax rolls. Based on the assumption that the residential portion of any homestead in a use code other than single family, mobile home, condominium or cooperative was valued at half the average value of a single family house in that county, adjustment factors were calculated that reduced the value reported as homestead and apportioned a piece of the homestead value to residential property and away from non-residential property. These adjustments were made on a county basis for all tables in this report showing county-level data and on a statewide basis for other years. For 2002 through 2006, the adjustments were based on the results from the specific tax rolls. Adjustments in all other years were based on the average adjustments for 2002-2006 stated as a percentage of total just or taxable value. Statewide, adjustments resulted in approximately a half percent of either total just or taxable value being subtracted from total homestead value and a half percent of total just or taxable value being shifted from non-residential to residential.

# Summary

## I. Introduction

- Florida's property tax structure is notable for a number of reasons:
  - Florida's constitution provides a strong just, or market, value standard, requiring all property to be assessed at market value.
  - Florida's constitution caps county, city and school district millages at 10 mills each.
  - Through the homestead exemption and Save Our Homes assessment growth limitation, Florida's constitution provides a large tax preference for owners of homestead property. In 2006, the value removed from the roll due to these provisions equaled more than one-fifth of total just value in the state.
  - Through the Truth In Millage (TRIM) process, Florida provides extensive information to taxpayers on assessments and local government millage levy decisions.
- This report has been prepared by the Department of Revenue pursuant to chapter 2006-311, L.O.F. The law requires the Department to analyze:
  - The effects of the Save Our Homes assessment growth limitation on the distribution of property taxes among and between homestead properties and other types of property;
  - The effect of Save Our Homes on affordable housing as evidenced by the differential tax burden of first-time and long-term homestead property owners and on non-homestead residential property owners;
  - The impact of Save Our Homes on each county;
  - The effects of Save Our Homes on the distribution of school property taxes;
  - The fiscal impacts of allowing the assessments under Save Our Homes to be transferred to newly acquired homes; and
  - The millage rates adopted by local governments compared to the rolled-back rate as advertised in the TRIM notices.
- The Department was required to prepare a draft of this study by November 15, 2006 and to conclude the study by January 2, 2007.

## II. The Distribution of Property Taxes Across Property Types

- There has been a long term trend in Florida toward a greater proportion of residential property on the tax roll. In terms of just value, residential property made up 38.9% of the property tax roll in 1974. In 2006, residential property comprised 67.1% of the roll.
- Save Our Homes has acted to significantly shift tax burden away from homestead property and onto non-homestead residential and non-residential property. In 2006, homestead property comprised 32.1% of taxable property, non-homestead residential property was 34.5% and non-residential property was 32.5%. Without Save Our Homes, these proportions would have been 45.5%, 28.4% and 26.1%, respectively.

- Even with the large shift in taxable value away from homestead property due to Save Our Homes, the counterbalance of the long term trend toward increased value of residential property has kept the taxable value of homestead property as a proportion of total taxable property surprisingly constant, equaling approximately 32% in both 1995 and 2006.

### **III. The Impact of Save Our Homes on Counties**

- There is great variation in the impact of the Save Our Homes assessment growth limitation among counties. In 2006, the reduction in taxable value resulting from the limitation varies from a high of 27.0% in Brevard County to a low of 5.4% in Hamilton County.
- This variation among counties is a function of four main factors. The percentage reduction in taxable value due to Save Our Homes is higher when:
  - a. The ratio of residential to non-residential property is higher.
  - b. The ratio of homestead property to residential property is higher.
  - c. The ratio of tax preferences for non-residential property to the total just value of non-residential property is higher.
  - d. The ratio of the Save Our Homes differential to homestead just value is higher. Differences here are mainly due to differences in property growth rates and homestead turnover rates.

### **IV. The Effect of Save Our Homes on Affordable Housing as Evidenced by Property Tax Data**

- Similarly valued \$150,000 homesteads in 2005 paid monthly taxes of \$204 if purchased in the previous year versus \$84 if purchased in 1999. With a 6.5% mortgage rate, this difference would equate to the ability to purchase a \$20,000, or 13%, higher valued home for those recently purchasing a homestead.
- In 2005, the median taxable value of homesteads purchased in the preceding year was \$125,144 versus \$68,897 for homesteads purchased in earlier years. Without the Save Our Homes assessment growth limitation, the newly purchased homesteads would have paid \$387 less per year in property taxes while the previously purchased homesteads would have paid an additional \$561 in property taxes.

### **V. The Effect of Save Our Homes on the Distribution of School Property Taxes**

- To raise equivalent dollars in 2006 in the absence of the Save Our Homes assessment growth limitation, the required local effort (RLE) school millage could have been reduced from 5.010 to 3.997 mills, or by 20.2%.
- The impact of this reduction varies by county. Generally, required local effort dollars levied would be greater in counties having a higher than average Save Our Homes differential as a proportion of taxable value and less in those counties where the differential is a lower proportion of value.
- For the 10 school districts with reduced RLE millages due to the 90% limitation on the local contribution, millage rates would be further reduced but the same property tax dollars would be collected. The amount of this millage

reduction would vary, again based on the relative size of the Save Our Homes differential.

## **VI. Fiscal Impact of Save Our Homes Portability**

- Working in conjunction with the Revenue Estimating Conference, preliminary fiscal estimates were produced on two possible “portability” scenarios. Estimates on the turn-over rate of homesteads, the percent of homestead property owners purchasing a different homestead, the value of newly purchased homestead properties that had higher just value than the previous homestead, future growth rates in just value, the value of new construction, and parcel growth were adopted. This work will be useful in estimating a wide variety of possible scenarios.
- For “full” portability, the preliminary fiscal impact would range from a 0.7% reduction in the tax roll in 2008 rising to a 2.4% reduction in 2012. “Full” portability would allow the transfer of the entire Save Our Homes differential to a new homestead, whether of greater or lesser value.
- For “mixed” portability, the preliminary fiscal impact would range from a 0.6% reduction in the tax roll in 2008 to a 2.0% reduction in 2012. “Mixed” portability would allow the transfer of the entire Save Our Homes differential when the new homestead is “upsized”, but only a percentage could be transferred when “downsizing”.

## **VII. Local Government TRIM Analysis**

- In 2005, local governments as a whole levied tax rates approximately 11% above the rolled-back rate. For non-public school levies this percentage was 11.7% and for public school levies, 10%. In 2006, these increases above the rolled-back rate were 14.4%, 14.3% and 14.6%, respectively.
- For counties in 2005, the most recent year for which rolled-back rate information is available, 32 levied a millage less than the previous year, 33 levied a millage equal to the previous year and 2 levied a millage greater than the previous year. Three counties levied a millage rate equal to or less than the rolled-back rate, 27 levied above the rolled-back rate but were less than a 10% above the rate, and 37 counties levied a rate greater than 10% above the rolled-back rate.
- For cities in 2005, 117 levied a millage less than the previous year, 211 levied a millage equal to the previous year and 46 levied a millage greater than the previous year. Fifteen cities levied a millage rate equal to or less than the rolled-back rate, 145 levied above the rolled-back rate but were less than a 10% above the rate, and 214 cities levied a rate greater than 10% above the rolled-back rate.
- For school districts in 2005, 62 levied a millage less than the previous year, none levied a millage equal to the previous year and 5 levied a millage greater than the previous year. Six school districts levied a millage rate equal to or less than the rolled-back rate, 27 levied above the rolled-back rate but were less than a 10% above the rate, and 34 school districts levied a rate greater than 10% above the rolled-back rate.

### VIII. Data Sources

- Three primary data sources were used in preparing this report.
  - Individual parcel data used in the roll approval process. There are approximately 9 million records statewide each year. The data is available for the years 1999 through 2006.
  - “Recapitulation” reports submitted by property appraisers and tax collectors summarizing tax roll data. This data is published each year in the Department’s Florida Property Valuations and Tax Data book.
  - Preliminary and final TRIM packages submitted by individual taxing authorities.
- In addition, at the request of the Department of Revenue the Department of Education provided a recalculation of the 2006 tax levy portions of the Florida Education Finance Program using a tax roll with the Save Our Homes differential eliminated.

# LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA'S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES

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## EXECUTIVE SUMMARY

This report provides an analysis of the legal issues raised by proposed alternatives to Florida's constitutional provisions relating to taxation of homestead property. The report focuses primarily on the federal constitutional issues raised by proposed alternatives to the Save Our Homes amendment, which limits property tax assessment increases on homestead property. The report also considers the federal constitutional implications of proposed alternatives to the homestead exemption, remedial questions, and a number of related issues (including the implications of the analysis for the existing Save Our Homes provision). By way of background to the federal constitutional analysis of the proposed alternatives to Florida's homestead provisions, the report provides an overview of Florida's ad valorem property tax system as it relates to these provisions and a brief survey of similar property tax limitations in other states.

**Overview of Florida's Ad Valorem Property Tax System and the Save Our Homes Amendment.** The Florida Constitution establishes various requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. Many of these constitutional requirements are reflected in correlative statutory provisions affirmatively incorporating such provisions in Florida's general law. Among these are state constitutional provisions authorizing local governments to impose ad valorem property taxes and state constitutional restrictions on local governments' ability to impose ad valorem property taxes.

In addition to a general homestead exemption of \$25,000, Florida adopted the Save Our Homes amendment to the state constitution in 1992 (effective 1995), limiting increases in homestead property tax assessments. This provision limited increases in assessments of homestead property to the lower of 3 percent over the prior year's

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assessment or the percentage change in the Consumer Price Index. Over the years, there have been sporadic challenges to various aspects of the homestead exemption and the Save Our Homes amendment, but none of these have successfully attacked the basic structure of the exemption or assessment limitation. Perhaps the two most significant cases were a 1982 decision invalidating on state constitutional law grounds a five-year residency requirement as a condition to receiving the homestead exemption and a 2000 decision sustaining the homestead exemption over claims by second home owners that limiting the homestead exemption to the owner's "permanent residence" violated federal constitutional restraints.

**Property Tax Assessment Limitations in States Other Than Florida.** Forty-three states impose rate, assessment, or revenue limitations on ad valorem property taxation. State legislatures or electorates have various motivations for imposing these limitations, including prevention of excessive or inefficient government expenditures and assuring consistency in property owners' ad valorem tax payments. Of these limitations, rate limitations are the most common with 34 states having adopted such restraints. Twenty-nine states impose revenue limitations, *i.e.*, restraints on the annual increase in property tax revenues. Twenty states impose property tax assessment limitations, and twelve of these (including Florida) have statewide limitations on increases in the taxable values of individual residential properties.

States' limitations on property tax assessments typically contain one or more of the following characteristics: (1) the limitation is linked to the percentage change in annual assessment from a "base year's" assessment to the current tax year's assessment, generally 3 to 5 percent; (2) the limitation is available only to senior citizens, the disabled, or some other specially defined group of homestead property owners linked to some self-evident policy concern; (3) the limitation does not embrace improvements made to the homestead property after the base year assessment; (4) a transfer of the homestead property results in a reassessment of the homestead property and, accordingly, the former owner of such property cannot carry his or her prior assessment limitation to a newly acquired property; (5) homestead property owners must apply for the assessment limitation based on personal characteristics (*e.g.*, age or income level) that are conditions for qualification of the benefit. The discussion in the report focuses on assessment limitations that are most similar to the Save Our Homes provision.

**Federal Constitutional Constraints on State and Local Ad Valorem Taxation: Overview.** Property taxes typically are *local* rather than *state* taxes. Indeed, in Florida, the state is precluded from levying property taxes. For federal constitutional purposes, there are two general points to keep in mind regarding this distinction. First, insofar as a federal constitutional restraint limits state taxation, it is irrelevant whether the taxation in question is that of the state itself or that of a political subdivision of a state (*e.g.*, a county taxing authority). The federal constitutional restraints apply in the same manner to both. Second, federal constitutional restraints on state and local taxation have no bearing on how a state chooses to allocate taxing power between itself and its political subdivisions or among its political subdivisions. In other words, federal constitutional restraints are evaluated at the state level, not at the local level.

The federal constitutional provisions that are most relevant to state ad valorem taxation of homestead property are directed to concerns far broader than taxation alone. These include the Equal Protection Clause, the Commerce Clause, the Privileges and Immunities Clauses of Article IV and of the Fourteenth Amendment, the Due Process Clause. In addition, several of these provisions form the basis of the “right to travel,” which may impose restraints on the states’ freedom to provide homestead property tax exemptions or assessment limitations.

*Equal Protection Clause.* The most important equal protection cases for purposes of this report are those addressing the constitutionality of discrimination in real property tax assessments. In 1989, in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, the U.S. Supreme Court held that the widespread practice of assessing newly purchased property on the basis of the property’s recent sales price is constitutionally unacceptable when no adjustment is made with respect to comparable unsold properties to reflect current value. Three years later, however, in *Nordlinger v. Hahn*, the Court sustained the constitutionality of California’s Proposition 13, which amended the state constitution to prohibit annual increases in valuations of more than 2 percent, except when the property was sold. Despite evidence of discriminatory assessments resulting from an acquisition value based property tax system, the Court found that the system satisfied the “rational basis” standard of equal protection analysis. The state had a legitimate interest in local neighborhood preservation and in protecting the reliance interests of existing owners against increased property taxes. Even though the impact of California’s ad valorem taxing scheme was indistinguishable in practical effect from the West Virginia scheme invalidated in *Allegheny*, the Court distinguished *Allegheny* on the ground that, in contrast to the purposes that justified California’s regime, there was an absence of any indication in *Allegheny* that the policies underlying an acquisition value taxation scheme could conceivably have been the purpose of the county assessor’s unequal assessment scheme.

*Commerce Clause.* The Commerce Clause by its terms is an affirmative grant of power to Congress “to regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes.” Nevertheless, from the very beginning of our constitutional history, the U.S. Supreme Court elaborated the view that the Commerce Clause, by its own force and without national legislation, imposes limits upon state authority. This is the so-called “dormant” or “negative” Commerce Clause. The Court has distilled its dormant Commerce Clause jurisprudence limiting state taxation into four operating principles that determine the validity of a state tax. First, the tax must be applied to an activity that has a substantial nexus with the state. Second, the tax must be fairly apportioned to activities carried on by the taxpayer in the state. Third, the tax must not discriminate against interstate commerce. Fourth, the tax must be fairly related to services provided by the state.

The threshold question in every Commerce Clause case is whether the state tax or regulation that is attacked as violating substantive Commerce Clause criteria even triggers Commerce Clause scrutiny, i.e., whether the challenged tax or regulation

involves interstate (as distinguished from local) commerce. Although the Court for many years drew lines between “interstate” and “local” activities that immunized taxes affecting local activities from Commerce Clause scrutiny, in its modern Commerce Clause decisions, the Court has come to recognize that any tax that substantially affects interstate commerce must be evaluated under the Court’s substantive Commerce Clause criteria. Thus in a 1997 decision that has particular relevance to Commerce Clause challenges to ad valorem property taxes, the Court in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, rejected the argument that the Commerce Clause did not apply to the claim that a property tax exemption discriminated against interstate commerce by favoring charitable institutions that were operated principally for residents. The Court observed that a tax on real estate, like any other tax, may impermissibly burden interstate commerce.

*“Interstate” Privileges and Immunities Clause.* The Privileges and Immunities Clause of Article IV of the Constitution (the so-called “interstate” Privileges and Immunities Clause) provides that “[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” The Court has relied on the clause to invalidate unjustified discrimination against nonresidents. The Court has also held, however, that the clause embraces only “fundamental” rights.

*Due Process Clause.* The Supreme Court has construed the Due Process Clause of the Fourteenth Amendment to limit the territorial reach of the states’ taxing powers, a limitation that has no bearing on the issues addressed in this report. The Due Process Clause is relevant to this report, however, insofar as it requires that taxpayers who have been subjected to an unconstitutionally discriminatory tax receive “meaningful backward-looking relief.” In other words, if a court were to find that any provision of Florida’s ad valorem property tax regime applicable to homestead property was invalid on federal constitutional grounds, then due process restraints would be relevant to whatever remedy must be provided to aggrieved homestead owners.

*Right to Travel.* The U.S. Supreme Court’s decisions have established a constitutional “right to travel” from one state to another, and the Court has prohibited states from unduly burdening that right. In its 1999 decision in *Saenz v. Roe*, which clarified the previously uncertain constitutional source of this right, the Court explained that the right to travel embraces at least three different components. It protects (1) the right of a citizen of one state to enter and to leave another state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state; and (3) for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state. The right to travel decisions most relevant to this report are those falling in the third category, namely, restraints on the states’ power to treat newly arrived residents less favorably than those who have been residents of the state for a longer time.

**Federal Constitutional Constraints on State and Local Ad Valorem Property Taxation: Applicability to Proposed Amendments to Florida Constitution.** The final part of the report describes the proposals for change to Florida’s constitutional provisions bearing on ad valorem taxation of homestead property, analyzes the federal constitutional

issues raised by those proposed changes (as well as any implications in the analysis for the existing state law limitations on homestead property taxation), and examines remedial issues that would be raised if any of the provisions under consideration were held to be unconstitutional on federal grounds.

*Proposed Amendments to Florida's Constitution.* During the 2005 and 2006 sessions of the Florida Legislature, numerous proposals were filed to make changes to the Save Our Homes assessment limitation and to the homestead exemption. The proposed changes generally take one of the following five forms, although there are variations to each of the basic proposals: (1) portability of the Save Our Homes differential; (2) modification of the existing Save Our Homes provision; (3) increase in the current homestead exemption; (4) extension of assessment limitations to non-homestead property; (5) elimination of the Save Our Homes provision.

The common theme underlying the portability proposals is that homestead owners may retain the right to the reduced assessment they are enjoying on their existing homestead property and may carry it with them to new homestead property that they acquire. Variations on the basic portability proposals include availability only within qualifying counties; capped amounts; age-limitations; directional limitations (upsized or downsized only); and one-time availability. Proposals to modify the Save Our Homes provision include limiting the differential to a certain dollar value or percentage of just value; limiting the duration of the assessment limitation; treating various classes of homeowners differently; and freezing homestead assessments after a specified period of time.

*Potential Constitutional Challenges to the Portability Proposals.* Of the five types of proposed changes to Florida's regime for ad valorem taxation of homestead property described above, the Save Our Homes portability proposals clearly raise the most serious constitutional questions, and most of the ensuing discussion in the report is addressed to these proposals. Nevertheless, much of this discussion has implications (both negative and positive) for other proposed changes to Florida's taxation of homestead property described above as well as for the existing treatment of homestead property. In order to avoid needless duplication of our legal analysis of each of these provisions, the report first undertakes a systematic analysis of the potential constitutional challenges to the basic portability proposals. It then considers the variations on these proposals as well as the other proposals described above, identifying the constitutional significance (if any) of the distinctions among the proposals.

Equal Protection Clause. Apart from equal protection objections relating to the right to travel (considered below), there do not appear to be serious equal protection objections to the basic portability proposals relating to the Save Our Homes assessment limitation. If, as in *Nordlinger*, the only question is whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest, it is plain that it does. There are ample rational bases that could be advanced for the portability provisions, including the facilitation of sales in the residential home market; the resulting economic development of such market; and the protection of the reliance interest of

Florida homeowners from the tax increases associated with soaring real estate prices. These certainly satisfy the loose rational-basis standard that the Court articulated in *Nordlinger* and repeated in many other cases.

Commerce Clause. The residential homestead market is associated with enormous interstate flows of capital and labor that could well be substantially affected by the Save Our Homes portability provisions. Accordingly, as a threshold matter, a court would likely conclude that a Commerce Clause challenge to the Save Our Homes portability provisions should be examined under substantive Commerce Clause criteria and should not be dismissed because the challenge lies outside the scope of the dormant Commerce Clause. The most substantial substantive Commerce Clause objection to the Save Our Homes portability would almost certainly be a claim that the provisions discriminate against interstate commerce. It is unlikely that such claim could be defended on the ground that the discrimination allegedly created by the Save Our Homes portability provisions affects all homestead purchasers who are not previous Florida homestead owners alike, whether they come from Florida or are newly arrived from other states. The Court has rejected similar defenses in similar circumstances, holding that a discriminatory tax or regulation is not protected from invalidation merely because the tax or regulation also discriminates against some forms of intrastate commerce.

The more difficult Commerce Clause question is whether the alleged burden that the Save Our Homes portability provisions impose on interstate capital flows and labor mobility amount to discrimination within the meaning of the Commerce Clause. Despite the absence of facial or purposeful discrimination, there is a plausible case that could be made that the portability provisions discriminate in effect against interstate commerce. Although this is a fact-sensitive inquiry, the evidence might demonstrate, among other things, that the portability provisions effectively imposed a higher cost on interstate than on (many) intrastate relocations; that individual decisions about whether to relocate in Florida were adversely affected by such costs, thereby affecting interstate labor mobility; that businesses were deterred from relocating in Florida due to the increased costs associated with relocating their employees in the state; and that there were nondiscriminatory alternatives for achieving the ostensible purpose of the portability provisions (e.g., making them available to newly arrived homesteaders on an “as if” basis, *i.e.*, as if their prior homesteads had been in Florida). Some of the same objections might be raised against the existing Save Our Homes provisions. However, since the magnitude of the increased tax burden on those making interstate moves would be reduced (because the burden would now be shared with those making intrastate moves), it would be more difficult to demonstrate that these increased costs influenced individual decisions about whether to relocate in Florida, and taxpayers would have a very steep uphill battle in prosecuting such a claim.

“Interstate” Privileges and Immunities Clause. The interstate Privileges and Immunities Clause generally proscribes unjustified discrimination against *nonresidents*. Because the Save Our Homes portability provisions draw no line between residents and nonresidents, but rather distinguish between two classes of residents, the clause by its terms would not appear to address the precise issues raised by those provisions. One might argue, however, that the existing Save Our Homes provision, as well as the

homestead exemption, discriminates against nonresidents in violation of the interstate Privileges and Immunities Clause, because only residents are entitled to the benefits of the assessment limitation or the homestead exemption. The Florida courts have already rejected such an attack on the homestead exemption by owners of second homes in the state, because all owners of second homes in Florida are treated alike, whether resident or nonresident.

Right to Travel. The right to travel and, in particular, the U.S. Supreme Court precedents invalidating state efforts to deprive newly arrived residents of the same governmental benefits that are available to long-time residents provide the most powerful constitutional basis for challenging the Save Our Homes portability provisions. In *Saenz v. Roe*, where the Court invalidated a California law limiting the welfare benefits of first-year residents to the benefits they received in their state of prior residence, the Court construed the Privileges and Immunities Clause of the Fourteenth Amendment as guaranteeing the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State. In prescribing the standard of review for evaluating a state's justification for treating newly arrived citizens and long-term citizens differently – a matter that could well play a central role in the outcome of any constitutional challenge to the Save Our Homes portability provisions – the Court concluded that neither “mere rationality” nor some other relaxed standard of review could be used to judge the constitutionality of a state rule that favors long-term over short-term residents. Instead, the standard of review demanded *at least* a “compelling state interest” if not a standard that was even more rigorous in justifying differential treatment of newly arrived residents and longer-term residents.

Application of the *Saenz* analysis to the Save Our Homes portability provisions suggests that these provisions would be subject to substantial constitutional objections. As in *Saenz*, a challenge to the Save Our Homes portability provisions will be brought by citizens who have completed their interstate travel, so it will be “beside the point” that the Florida scheme might have only an incidental effect on travel itself; the right at issue will be “the citizen’s right to be treated equally in her new State of residence.” As in *Saenz*, there will be no question about the bona fides of the new residents’ claim to being residents; their acquisition of a Florida homestead will put that question to rest. As in *Saenz*, there will be no danger that granting newly arrived residents the Save Our Homes portability benefits would encourage citizens of other states to establish temporary residence in the state in order to acquire some “readily portable benefit, such as a divorce or a college education, that will be enjoyed after they return to their original domicile.” Finally, insofar as Florida might seek to defend the limitation of the Save Our Homes portability benefits to former Florida homestead owners on fiscal grounds, the justification (as in *Saenz*) would appear to be inadequate regardless of its strength, because the Citizenship Clause of the Fourteenth Amendment “does not provide for, and does not allow for, degrees of citizenship based on length of residence.”

Despite the *Saenz*-based argument that can be advanced for finding the Save Our Homes portability provisions unconstitutional, there are several points of distinction between the facts of *Saenz* and the facts surrounding the Save Our Homes portability

provisions that could lead courts to find the cases distinguishable for constitutional purposes. First, the provisions in *Saenz* explicitly drew distinctions between residents who had been in California for less than a year and other residents. By contrast, the Save Our Homes portability provisions draw no explicit “durational” residency requirement. However, as a practical matter, by limiting the Save Our Homes portability benefits to prior owners of Florida homesteads Florida is in effect drawing a line between newly arrived and long-term residents that will be evaluated under the Fourteenth Amendment’s Citizenship Clause. Second, one might argue that the facts of *Saenz* are distinguishable from those surrounding the Save Our Homes portability provisions because the provisions in *Saenz* favored *all* long-term residents (as well as some newly arrived residents) over newly arrived residents whereas Save Our Homes portability provisions treat new Florida homestead owners who were prior Florida residents no differently from new Florida homestead owners who previously resided in some other state. The problem with this argument is that a provision that discriminates against outsiders in favor of insiders does not cease to be discriminatory merely because some insiders are likewise victims of the discrimination. Third, one might contend that the needs of newly arrived Florida homesteaders for the benefits of the Save Our Homes portability provisions are less compelling than the needs of previous Florida homesteaders for such benefits, which would distinguish the case from *Saenz*, where the needs of newly arrived and long-time residents for welfare benefits were indistinguishable. The strength of this argument would ultimately depend on the facts, but the Court’s articulation of the appropriate standard of review in *Saenz* would put a heavy burden on the state. Finally, one might contend that the Save Our Homes portability provisions are distinguishable from *Saenz* and other durational residency cases, where the state can easily fix the problem simply by removing the restriction at issue and granting all residents, new and old, the same (or some reduced) level of benefits. Although there may be no such easy “fix” to the problem Florida faces, the state would need to meet its heavy burden of justification to demonstrate that in pursuit of its legitimate administrative objectives, it “has chosen means which do not unnecessarily impinge on constitutionally protected interests” and that “less drastic means” are not available.

Although some of the right to travel objections to the Save Our Homes portability provisions could likewise be leveled against the existing Save Our Homes provisions, the magnitude and nature of the favoritism for long-term over newly arrived residents under the portability provisions as compared to the existing Save Our Homes assessment limitation make the former much more vulnerable to attack than the latter.

*Potential Constitutional Challenges to Variations on Basic Portability Proposals and to Other Proposals Related to Homestead Exemption.* The variations on the basic portability proposal set forth above do not raise substantial federal constitutional questions beyond those considered in connection with the basic proposal. To the extent that the variations limit the amount of the benefit being “ported,” there may be a stronger argument in defense of the provision, because the discrimination against newly arrived residents or the burden on interstate commerce is mitigated to that extent. The increase in the strength of such a defense, however, would depend on the extent to which the discrimination or burden were truly mitigated.

*Remedial Issues.* If any of the proposed modifications to the Save Our Homes assessment limitation or to the homestead exemption were found to be unconstitutional on the ground that they discriminated against newly arrived residents or imposed an undue burden on interstate commerce, the question would arise as to the appropriate remedy for such a violation. On a going forward basis, the discrimination or burden would have to be eliminated either by (1) providing the favored treatment to all taxpayers (or to all taxpayers within the same favored class, *e.g.*, persons over age 55) or (2) providing the disfavored treatment to all such taxpayers. The severability provision of the existing Save Our Homes provision appears to require invalidation of only the particular feature of the provision that is held unconstitutional and does not authorize a court to “rewrite” the amendment in any other way to preserve its constitutionality. Consequently, if Save Our Homes is unconstitutional because it provides benefits to long-term homestead owners that it does not provide to newly arrived homestead owners, the appropriate remedy would be to invalidate the provision according a preference to long-term homestead owners, namely, eliminating the assessment benefit, rather than “rewriting” the amendment in an effort to provide equal benefits to all bona residents. If this severability provision were applicable to any changes to Save Our Homes, the same analysis would apply.

The same state law principles that govern the remedy issue on a prospective basis would also govern the analysis on a retrospective basis, but subject to federal due process criteria for relief when a taxpayer has been required under duress to pay taxes that are later determined to be unconstitutional. Under *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, if a state places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the state to provide meaningful backward-looking relief to rectify any unconstitutional deprivation. Meaningful backward-looking relief for a discriminatory tax may entail either a refund or any other remedy that cures the discrimination, *e.g.*, taxing the previously favored class on a retroactive basis.

Under the Save Our Homes severability provision, a Florida court invalidating the Save Our Homes amendment or some modification thereof on federal constitutional grounds would likely find as a matter of state law that the provision according preferential treatment to certain long-term homestead owners should be severed, and that all relevant taxpayers should receive the less favorable rather than the more favorable treatment. The federal due process question would then become whether Florida could in fact provide equal treatment to all relevant taxpayers on a retroactive basis by collecting additional taxes from those who had previously benefited from the Save Our Homes assessment limitation rather than providing refunds to those who had not benefited (or had benefited less). A serious, if not insurmountable, objection to this approach is that Florida could not, as a practical matter, retroactively collect taxes from the Save Our Homes beneficiaries in a manner that in fact would create the constitutionally required equality. Whether such equality in fact could be achieved would depend on such factors as (1) the state's ability to identify the taxpayers who benefited from the challenged

provision during the years at issue; (2) the state's ability to determine the current whereabouts of the taxpayers so identified; and (3) the state's ability to enforce collection of the previous tax preference against these taxpayers, taking account of (a) the possibility that many of the beneficiaries may no longer be resident in Florida and (b) the possibility that the financial circumstances of such taxpayers would in many cases make it burdensome, if not impossible, to require payment of the back taxes (and appropriate interest) for several years. In the end, there is no simple answer to the question posed at the beginning of the paragraph; instead, it will depend on the facts and circumstances surrounding the challenged preference at issue and the class of taxpayers to which it applies. Nevertheless any effort by the state to remedy the unconstitutional preference by back taxing the previously favored taxpayers rather than granting appropriate refunds to the previously disfavored taxpayers would embroil the state in litigation for years.

## **APPENDIX B**

# LEGAL ANALYSIS OF PROPOSED ALTERNATIVES TO FLORIDA'S HOMESTEAD PROPERTY TAX LIMITATIONS: FEDERAL CONSTITUTIONAL AND RELATED ISSUES

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## I. INTRODUCTION

This report provides an analysis of the legal issues raised by proposed alternatives to Florida's constitutional provisions relating to taxation of homestead property. The report focuses primarily on the federal constitutional issues raised by proposed alternatives to the Save Our Homes amendment, which limits property tax assessment increases on homestead property. The report also considers the federal constitutional implications of proposed alternatives to the homestead exemption, remedial questions, and a number of related issues (including the implications of the analysis for the existing Save Our Homes provision). By way of background to the federal constitutional analysis of the proposed alternatives to Florida's homestead provisions, we provide an overview of Florida's ad valorem property tax system as it relates to these provisions and a brief survey of similar property tax limitations in other states.

Specifically, Part II of this report provides an overview of Florida's ad valorem property tax system and the Save Our Homes amendment; Part III surveys property tax limitations in states other than Florida; Part IV provides an overview of the federal constitutional restraints on state taxation, focusing on those restraints most pertinent to ad valorem property taxation and homestead assessment limitations; and Part V applies the federal constitutional principles delineated in Part IV to the proposed alternatives to Florida's taxation of homestead property, and it considers related state and federal constitutional requirements regarding remedies for unconstitutional taxes.

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## II. THE FLORIDA AD VALOREM PROPERTY TAX SYSTEM AND THE SAVE OUR HOMES AMENDMENT: OVERVIEW

### A. Introduction

The property tax is the largest source of tax revenues in Florida.<sup>1</sup> It is imposed exclusively by local governments,<sup>2</sup> which collected approximately \$22.4 billion in property taxes in 2004 and \$25.7 billion in 2005.<sup>3</sup> Property tax revenues fund public schools, police and fire protection, building code enforcement, emergency response services and many other essential local functions.<sup>4</sup> In 1992, Florida adopted the Save Our Homes amendment to the state constitution, which became effective in 1995, limiting increases in homestead property tax assessments.<sup>5</sup> The Save Our Homes amendment has had dramatic consequences for Florida's property tax system.<sup>6</sup>

Part II of this report provides a brief overview of the current Florida property tax system as it relates to the homestead exemption and the Save Our Homes amendment in order to provide the appropriate background for the report's discussion of the potential impact of the proposed alternatives to these provisions. We focus on the state constitutional and statutory provisions bearing on ad valorem property taxation and, in particular, those provisions relating to the homestead exemption and the Save Our Homes assessment limitation. We also describe the case law arising under these provisions. We wish to make it clear from the outset that the following discussion is not offered as a comprehensive examination of the state constitutional and statutory framework governing Florida's ad valorem property tax system. Rather, it is a limited and highly selective

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<sup>1</sup> See, e.g., Fla. Dep't of Revenue, *2005 Annual Report*, at 17 < <http://www.myflorida.com/dor/report/> > (accessed Oct. 7, 2006). Florida imposes its property tax on "[a]ll real and personal property in this state and all personal property belonging to persons residing in this state," Section 196.001(1), F.S., except for household goods. Section 196.181, F.S.

<sup>2</sup> Counties, municipalities, school districts shall, and special districts may, impose ad valorem property taxes on real and tangible personal property. FLA. CONST. art. VII, § 9(a). The state may not levy ad valorem property taxes on real or tangible personal property. FLA. CONST. art. VII, § 1(a).

<sup>3</sup> Fla. Dep't of Revenue, *2005 Annual Report*, at 17 < <http://www.myflorida.com/dor/report/> > (accessed Oct. 7, 2006); Fla. Dep't of Revenue, *2005 Fla. Property Valuations & Tax Data* (May 2006) < <http://www.myflorida.com/dor/> > (accessed Oct. 7, 2006); Fla. Dep't of Revenue, *Property Tax Administration Program* < <http://www.myflorida.com/dor/report/> > (accessed Oct. 7, 2006).

<sup>4</sup> *Id.*

<sup>5</sup> FLA. CONST. art. VII, § 4(c).

<sup>6</sup> See e.g. Exec. Order No. 06-141, Office of the Fla. Gov. (6/21/2006) (describing the unintended effects of the Article VII, § 4(c), popularly known as the "Save Our Homes Amendment"); Richard Hawkins, *Four Easy Steps to a Fiscal Train Wreck: The Florida How-To Guide*, Fiscal Research Center, Andrew Young School of Policy Studies, FRC Rep. No. 132 (August 2006).

summary of what we believe are the key constitutional and statutory provisions that bear on our principal task at hand (which we undertake in Parts IV and V of this report), namely, an analysis of the federal constitutional issues raised by the proposed constitutional changes to the Save Our Homes amendment and to the homestead exemption.

## **B. Administration**

Most administrative duties related to ad valorem property taxes levied on property in Florida are handled at the county level with supervisory oversight at the state level. The county property appraisers value, assess and prepare tax rolls for property located in their counties.<sup>7</sup> County officials collect county property taxes as well as property taxes levied by school boards, municipalities, and special districts located within their respective county.<sup>8</sup>

The Florida Department of Revenue supervises the assessment and valuation of property to assure that county appraisers place all property on the tax rolls and value such property according to its just valuation, as required by the Florida Constitution.<sup>9</sup> The Department of Revenue supervises all aspects of the administration of ad valorem property taxes, including collection, and it assists county officials in carrying out their statutory duties.<sup>10</sup>

## **C. The Florida Constitution**

The provisions of the Florida Constitution most relevant to this report are those relating to ad valorem property taxation.

### **1. Ad Valorem Property Tax Provisions**

The Florida Constitution establishes various requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. Many of these constitutional requirements are reflected in correlative statutory provisions affirmatively incorporating such provisions in Florida's general law.<sup>11</sup>

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<sup>7</sup> Sections 192.001(3), 192.011, 193.116(1), F.S.

<sup>8</sup> Sections 192.001(4); 193.116(2), 125.01(1)(r), F.S.

<sup>9</sup> Section 195.002(1), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> We consider these statutory provisions in Part II(D) *infra*.

**a. State Constitutional Provisions Authorizing Local Governments to Impose Ad Valorem Property Taxes**

The Florida Constitution authorizes counties, school districts, municipalities, and special districts to levy ad valorem taxes, except ad valorem taxes on intangible personal property and taxes explicitly prohibited by the constitution.<sup>12</sup> As with all Florida taxes, localities must levy the ad valorem property tax in accordance with the Florida statutes, including the regulations and guidance promulgated thereunder by the Department of Revenue.<sup>13</sup>

**b. State Constitutional Restrictions on Local Governments' Ability to Impose Ad Valorem Property Taxes**

The Florida Constitution contains a variety of restrictions that limit local governments' general authority to levy ad valorem property taxes. For example, the state constitution guarantees due process of law<sup>14</sup> and requires the legislative adoption of a Taxpayer's Bill of Rights.<sup>15</sup> Other constitutional provisions address millage rates<sup>16</sup> and exemptions (including homestead). The constitution also imposes various restrictions on the type of law that the legislature may enact regarding property taxes,<sup>17</sup> to whom the

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<sup>12</sup> FLA. CONST. art. VII, § 9(a); *see also* FLA. CONST. art. VIII, § 2 (providing municipalities "shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law"). Although implicit in the constitution's affirmative grant of taxing power to local governments, the constitution expressly prohibits the state from levying an ad valorem property tax on real estate or tangible personal property. FLA. CONST. art. VII, § 1(a).

<sup>13</sup> FLA. CONST. art. VII, § 1(a); *Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1 (Fla. 1972) (holding any tax not authorized by general law was necessarily invalid by virtue of the preemption clause of FLA. CONST. art. VII, § 1).

<sup>14</sup> FLA. CONST. art. I, § 9. In the property tax context, due process is particularly relevant to the state's tax sale procedures. *See e.g. Weingarten Assoc., Inc. v. Jocalbro, Inc.*, 932 So.2d 587 (Fla.App. 2006)

<sup>15</sup> FLA. CONST. art. I, § 25. The Taxpayer's Bill of Rights is codified at Section 213.015, F.S., and additional property tax-specific rights are codified at Section 192.0105, F.S. The Taxpayer's Bill of Rights is discussed *infra* notes 85-88 and accompanying text.

<sup>16</sup> FLA. CONST. art. VII, § 2; *see also* FLA. CONST. art. IX, § 4 (authorizing school boards to determine the rate of school district taxes within constitutional limits).

<sup>17</sup> The constitution prohibits the enactment of any special law or general law of local application that relates to (1) assessment or collection of taxes for state or county purposes, including: extending the time for assessment or collection, relieving tax officers from performance of their duties or relieving their sureties from liability; and (2) the refund of money legally paid or remission of fines, penalties or forfeitures. FLA. CONST. art. III, §§ 11(a)(2), 11(a)(8).

benefit of intra-county property tax collections may accrue<sup>18</sup> and taxpayer remedies.<sup>19</sup> These constitutional limitations apply only to taxes and not to special assessments.<sup>20</sup>

The constitutional provisions most relevant to this report are those related to the homestead property and property owners and to limitations on assessment. Indeed, qualification as a homestead property owner is a prerequisite for application of the constitutional limitations on assessment. Accordingly, we focus our attention on these provisions.

### **i. Homestead Exemption and Protection**

The Florida Constitution generally exempts a number of broad categories of property on the basis of its ownership, use, or nature.<sup>21</sup> The homestead exemption, however, is set forth in a separate constitutional provision. Under this provision, Florida permanent residents that own a home may claim a homestead exemption, which reduces the assessed value of the owner's permanent residence by \$25,000.<sup>22</sup> The constitution also provides for the local option of an additional homestead exemption of up to \$50,000 to low-income persons over the age of 65.<sup>23</sup> Although the homestead exemption is

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<sup>18</sup> The constitution precludes counties from levying ad valorem property tax on property located within municipalities for services it provides exclusively for the benefit of the property or residents of unincorporated areas. FLA. CONST. art. VIII, § 1(h).

<sup>19</sup> Article VII, § 13 of the Florida Constitution provides “[u]ntil payment of all taxes which have been legally assessed upon the property of the same owner, no court shall grant relief from payment of any tax that may be illegal or illegally assessed.”

<sup>20</sup> A “special assessment” is an assessment where (1) the services at issue provide a special benefit to the assessed property and (2) the assessment for the services is properly apportioned. *See e.g. City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002); *Lake County v. Water Oak Mgt. Corp.*, 695 So. 2d 667, 669 (Fla. 1997).

<sup>21</sup> The constitution exempts the following: municipally-owned property; property used predominately for educational, literary, scientific, religious or charitable purposes; household personal property; recipients of community and/or economic development grants; renewable energy source devices and land on which such device is situated; and historic preservation properties. FLA. CONST. art. VII, § 3.

<sup>22</sup> FLA. CONST. art. VII, §§ 6(a), 6(c), 6(d). The basic homestead exemption provides: “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 special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.” FLA. CONST. art. VII, § 6(a); see also FLA. CONST. art. VII, §§ 6(c), 6(d) (increasing exemption to \$25,000).

<sup>23</sup> FLA. CONST. art. VII, § 6(f); *see also* Section 196.075, F.S. (implementing FLA. CONST. art. VII, § 6(f)). The constitution additionally provides that a county may require the property appraiser to reduce the assessed value of homestead property for persons constructing living quarters thereon for their or their spouse's parents or grandparents. FLA. CONST. art. VII, § 4(e); *see also* Section 193.703, F.S.

broadly available, the Florida Supreme Court has held that taxpayers must establish their right to the exemption by complying with the applicable procedural requirements set forth in the Florida Statutes for establishing that right.<sup>24</sup>

In addition to the homestead exemption, the Florida Constitution protects homestead property from forced sales (except those related to payment of taxes).<sup>25</sup> The constitution also addresses situations involving the devise and inheritance of homesteads.<sup>26</sup>

## ii. Limitations on Assessments

The Florida Constitution generally requires that all property be assessed at its just value.<sup>27</sup> Accordingly, assessing property at its just value is one of Florida's fundamental concepts related to ad valorem property taxation.<sup>28</sup> "Just value" has been defined as fair market value<sup>29</sup> as well as the price a willing buyer would pay a willing seller in an arms-length transaction,<sup>30</sup> which is a traditional definition of fair market value.

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(implementing FLA. CONST. art. VII, § 4(e)). Effective December 7, 2007, the constitution provides for a discount from ad valorem taxes on homestead property for disabled veterans age 65 or older if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. FLA. CONST. art. VII, § 6(g).

<sup>24</sup> *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973); see Sections 196.11 - 196.171, F.S.

<sup>25</sup> FLA. CONST. art. X, § 4(a).

<sup>26</sup> FLA. CONST. art. X, § 4(c).

<sup>27</sup> FLA. CONST. art. VII, § 4. When analyzing Florida's property tax regime, one must distinguish "just value" from both "assessed value" and "taxable value". "Assessed value" means just value as limited under the Save Our Homes amendment, discussed *infra*, or other specific constitutional limitations on assessment not relevant to this report. Section 192.001(2), F.S. "Taxable value" means the assessed value minus any applicable exemptions, such as the homestead exemption, provided under Florida law. Section, 192.001(16), F.S.

<sup>28</sup> FLA. CONST. art. VII, § 4 (providing "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation").

<sup>29</sup> *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965) (holding "just value" means "fair market value").

<sup>30</sup> Fla. Admin. Code 12D-1.002(2) (defining "just value" as "the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other").

**(a) Overview of the Save Our Homes Amendment**

In 1992, Florida voters approved an amendment to the constitution, Article VII, § 4(c), popularly known as the Save Our Homes amendment.<sup>31</sup> Beginning with assessments based on the just value of property as of January 1, 1994, this provision limited increases in assessments of homestead property to the lower of 3 percent over the prior year's assessment or the percentage change in the Consumer Price Index (the "Save Our Homes assessment limitation"). The Save Our Homes amendment became effective January 5, 1993,<sup>32</sup> which meant (1) the first valuation date under the Save Our Homes amendment occurred January 1, 1994 and (2) the Save Our Homes assessment limitation first applied to the January 1, 1995 assessment.

Only persons entitled to a homestead exemption may benefit from the Save Our Homes assessment limitation, as the introductory language of the Save Our Homes amendment makes clear:

All persons entitled to a homestead exemption<sup>33</sup> under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective dates of this amendment. This assessment shall change only as provided herein.<sup>34</sup>

The Save Our Homes amendment includes the following specific requirements:

- Annual assessments changes are limited to the lower of: (1) 3 percent of the assessment for the prior year, or (2) the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.<sup>35</sup>

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<sup>31</sup> FLA. CONST. art. VII, § 4(c).

<sup>32</sup> See *Fuchs v. Wilkinson*, 630 So. 2d 1044 (Fla. 1994).

<sup>33</sup> As noted above, see *supra* note 22, the Florida Constitution provides a homestead exemption from ad valorem taxation for every person "who has legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent on the owner." FLA. CONST. art. VII, § 6(a).

<sup>34</sup> FLA. CONST. art. VII, § 4(c).

<sup>35</sup> FLA. CONST. art. VII, § 4(c)(1). Combined with the introductory language that mandates an initial assessment at just value, the Save Our Homes limitation provided for in this subsection will result in an increase in assessed value even if just value does not change or fall when (1) a homestead is assessed at less than just value due to the Save Our Homes limitation, and (2) the following year, the just value remains unchanged. In such cases, the appraiser must increase the home's value to just value (*i.e.*, fair market value) but subject to the 3 percent or Consumer Price Index limitation.

- After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided in Article VII, § 4 (including the Save Our Homes provision) of the Florida Constitution.<sup>36</sup>
- New homestead property shall be assessed at just value as of January 1 of the year following the establishment of the homestead. Such assessment shall only change as provided in Article VII, § 4 (including the Save Our Homes provision) of the Florida Constitution.<sup>37</sup>
- Changes, additions, reductions or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustments for any change, addition, reduction or improvement, the property shall be assessed as provided in Article VII, § 4 (including the Save Our Homes provision) of the Florida Constitution.<sup>38</sup>
- In the event of termination of homestead status, the property shall be assessed as provided by general law.<sup>39</sup>

The provisions of the Save Our Homes amendment are severable, *i.e.*, if a court finds any part of the amendment unconstitutional, a court decision “shall not affect or impair any remaining provisions of this amendment.”<sup>40</sup>

#### **(b) Survey of Case Law**

Even before its approval in 1992 and several times since its adoption, Florida courts have addressed the constitutional issues raised by the Save Our Homes amendment. The ensuing discussion briefly surveys the judicial decisions involving the constitutionality of the Save Our Homes amendment, the limitations on the assessment of homestead property that the amendment prescribed, and other challenges to Florida’s homestead provisions that are relevant to the issues considered in this report.

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<sup>36</sup> FLA. CONST. art. VII, § 4(c)(3).

<sup>37</sup> FLA. CONST. art. VII, § 4(c)(4).

<sup>38</sup> FLA. CONST. art. VII, § 4(c)(5).

<sup>39</sup> FLA. CONST. art. VII, § 4(c)(6).

<sup>40</sup> FLA. CONST. art. VII, § 4(c)(7).

**(i) Constitutional Challenges Prior to Enactment of the Save Our Homes Amendment**

Even before the Save Our Homes amendment was presented to the Florida electorate, the amendment was twice reviewed by the Supreme Court of Florida. In the first case, the court issued an advisory opinion that sustained the validity of the scope and content of the Save Our Homes amendment's initiative petition and ballot summary under the Florida Constitution.<sup>41</sup> In the second case, the Florida League of Cities sought to have the Save Our Homes amendment removed from the ballot, arguing that if the electorate approved the proposed amendment, Article VII, § 6(d) would have the effect of repealing part of the preexisting \$25,000 homestead exemption,<sup>42</sup> because that article repeals part of the homestead exemption "on the effective date of any amendment to section 4 [of Article VII] which provides for the assessment of homestead property to a specified percentage of just value."<sup>43</sup> The Save Our Homes amendment, however, does not require assessments at a "specified percentage of just value"; rather, the Save Our Homes assessment limitation is based either on the prior year's assessment or on the Consumer Price Index. Accordingly, the court held that the Save Our Homes amendment would not trigger the repealer provision of Article VII, § 6(d).<sup>44</sup>

**(ii) The Amendment's Effective Date**

In *Fuchs v. Wilkinson*,<sup>45</sup> the Florida Supreme Court held that the Save Our Homes amendment became effective January 5, 1993 pursuant to the requirement of Article XI, § 5(c) of the Florida Constitution that the effective date of constitutional amendments is deemed to occur on the first Tuesday after the first Monday in January following if no other effective date is specified. Because the effective date of the Save Our Homes amendment was deemed to occur on January 5, 1993, the first baseline assessment under the amendment occurred on January 1, 1994, with the assessment limitation taking effect on January 1, 1995.

**(iii) Purpose of the Save Our Homes Amendment**

In *Smith v. Welton*,<sup>46</sup> the First District Court of Appeal said:

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<sup>41</sup> *In re: Advisory Opinion to the Attorney General – Homestead Valuation Limitation*, 581 So.2d 586, 587-88 (Fla. 1991).

<sup>42</sup> *Florida League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992).

<sup>43</sup> This "repealer" provision would apply only to the additional homestead exemption provided for in § 6(d).

<sup>44</sup> *Fla. League of Cities, supra*.

<sup>45</sup> 630 So. 2d 1044 (Fla. 1994).

<sup>46</sup> 710 So. 2d 135, 137 (Fla. App. 1998).

The purpose of the [Save Our Homes] amendment is to encourage the preservation of homestead property in face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption (*Article VII, Section 6, Florida Constitution*), exemption from forced sale (*Article X, Section 4(a), Florida Constitution*), and the inheritance and alienation of homestead (*Article X, Section 4(c), Florida Constitution*).<sup>47</sup>

**(iv) Applicability of the Save Our Homes Assessment Limitation**

Extending the rationale of its prior decision holding that the homestead exemption is not an absolute right,<sup>48</sup> the Florida Supreme Court held that the Save Our Homes amendment concerns “only those homeowners who have applied for and received the homestead exemption are entitled to the benefits of either [the homestead exemption or the Save Our Homes assessment limitation].”<sup>49</sup> Thus, the grant of the homestead exemption results in the establishment of the “baseline” assessment necessary for the Save Our Homes assessment limitation. In so holding, the court stated, “[a]lthough taxpayers have a right to the constitutional cap, the right is not self-executing.”<sup>50</sup>

In the event the assessed value of property is based on clerical mistakes or data entry errors, the Florida Supreme Court has held that the Save Our Homes assessment limitation does not “forever ‘lock in’ the erroneous data and resulting assessment, thereby allowing property owners to forever pay artificially reduced taxes as long as they own the property.”<sup>51</sup>

**(v) Validity of Administrative Rule Implementing Save Our Homes Assessment Limitation**

The Florida Division of Administrative Hearings rebuffed a statutory and constitutional challenge to the promulgation of an administrative rule adopted to implement the Save Our Homes assessment limitation.<sup>52</sup> The Division found that there

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<sup>47</sup> *Id.* at 137.

<sup>48</sup> *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973).

<sup>49</sup> *Zingale v. Powell*, 885 So. 2d 277, 285 (Fla. 2004).

<sup>50</sup> *Id.*

<sup>51</sup> *Smith v. Krosschell*, 31 Fla. L. Weekly S 533 (August 31, 2006).

<sup>52</sup> *Markham v. Department of Revenue*, No. 95-1339RP, Florida Division of Administrative Hearings, June 21, 1995.

was no basis for the petitioner’s claim that the rule, which closely tracked both the amendment and the statute implementing the amendment,<sup>53</sup> was either arbitrary and capricious, or vague, or contrary to the intent of the Save Our Homes amendment.

**(vi) Remedies for Loss of the Save Our Homes Assessment Limitation**

In *State Department of Transportation v. Lounders*,<sup>54</sup> the plaintiffs attempted to bring a class action lawsuit seeking compensation for takings under eminent domain that deprived the plaintiffs of their existing Save Our Homes assessment limitation benefits. While agreeing with the plaintiffs on the merits of their claim,<sup>55</sup> the court denied certification of the class because the class representatives’ claims were not typical of the claims of each member of the class and because the court could not adequately measure damages on a class-wide basis.

**(vii) Other Relevant Case Law**

In conjunction with 1980 constitutional amendments to Florida’s homestead exemption that phased in a broad-based \$25,000 exemption, the Florida legislature adopted a five-year residency requirement as a condition to claiming the exemption.<sup>56</sup> In *Osterndorf v. Turner*,<sup>57</sup> however, the Florida Supreme Court held that the *legislatively prescribed* residency requirement for entitlement to the *constitutionally authorized* homestead exemption violated the state equal protection clause. The court found that the durational residency requirement “effectively establishes two categories of permanent residents for entitlement to homestead tax exemption,”<sup>58</sup> and that there was no rational basis for the distinction:

First, it is constitutionally prohibited for this state to impose different taxes on its citizens based solely on their length of permanent residence in the state. Second, it is not a legitimate state purpose to reward certain citizens for past contributions to the detriment of other citizens. Third, we find five years is an unreasonable period of time to establish bona fide residency and is unnecessary to discourage

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<sup>53</sup> Section 193.155, F.S.

<sup>54</sup> No. 29-2004-CA-006624, Hillsborough County Circuit Ct., March 6, 2006.

<sup>55</sup> *State Department of Transportation v. Lounders*, No. 29-2004-CA-006624, Hillsborough County Circuit Ct., September 27, 2005 (Save Our Homes assessment limitation benefit is a “property right” for which taxpayers are entitled to just compensation in eminent domain proceeding).

<sup>56</sup> See *Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1982), *on rehearing*, 426 So. 2d 547 (Fla. 1983).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 545.

fraudulent homestead exemption applications. Fourth, the avoidance of possible or excessive immigration of individuals to this state is clearly not constitutionally permissible.<sup>59</sup>

Because the court decided the case on state constitutional grounds, it did not reach the federal constitutional objections to the durational residency requirement.

Like most states with homestead exemptions, Florida limits the homestead exemption to the taxpayer's principal or permanent residence.<sup>60</sup> This limitation has a particular bite in Florida, where many nonresidents own vacation homes. Two out-of-state residents, who owned second homes in Florida, challenged the limitation of Florida's homestead exemption to the owner's "permanent residence" on the grounds that it violated the federal Equal Protection, Privileges and Immunities, and dormant Commerce Clauses.<sup>61</sup> In rejecting the equal protection claim, the court observed that the Florida exemption treated the taxpayers "no differently from ... Florida residents who use Florida real property as a secondary, seasonal, or vacation residence."<sup>62</sup> The court likewise rebuffed the contention that the limitation violated the Privileges and Immunities Clause on the theory that it discriminated against nonresidents, because the difference in tax treatment of the nonresidents' and residents' real property was only "incidentally related to state residency,"<sup>63</sup> and was in substance a distinction between those owners of residences and owners of second homes. Finally, the court dismissed the taxpayers' dormant Commerce Clause argument on the grounds that the exemption did not discriminate on its face against interstate commerce and constituted an "evenhanded regulation that promotes the strong interest in promoting the stability and continuity of the primary home"<sup>64</sup> while imposing only an "incidental" burden on interstate commerce that was outweighed by the local benefits.

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<sup>59</sup> *Id.*

<sup>60</sup> FLA. CONST. art. VII, § 6.

<sup>61</sup> We discuss these federal constitutional provisions, and their applicability to the proposed constitutional changes to the Save Our Homes amendment and other homestead provisions, in Parts IV and V *infra*. We consider here only the preexisting Florida case law bearing on these issues.

<sup>62</sup> *Reinish v. Clark*, 765 So. 2d 197, 205 (Fla. Dist. Ct. App. 2000), *review denied*, 790 So. 2d 1107 (Fla.), *cert. denied*, 534 U.S. 993 (2001).

<sup>63</sup> *Id.* at 210 (Fla. Dist. Ct. App. 2000) (emphasis in original), *review denied*, 790 So. 2d 1107 (Fla.), *cert. denied*, 534 U.S. 993 (2001). *Accord*, *Rubin v. Glaser*, 416 A.2d 382 (N.J. 1980); *Markham v. Comstock*, 708 N.Y.S.2d 674 (App. Div. 4th Dep't), *appeal denied*, 738 N.E.2d 781 (N.Y. 2000), *cert. denied*, 531 U.S. 1079, (2001).

<sup>64</sup> *Reinish*, 765 So. 2d at 215.

## **D. Florida’s Statutory Law Related to Ad Valorem Taxation of Real Property**

### **1. Overview**

While the Florida Constitution prescribes broad rules regarding the grant of and restraints on local governments’ authority to tax, the Florida statutes implement such grants and restraints and provide more specific detail related to the administration, collection and enforcement of the property tax. For example, the Florida statutes grant localities the authority to tax all real property not otherwise exempt located within their respective taxing jurisdictions and to assess such property on January 1 of each year.<sup>65</sup>

In addition to the grant of taxing authority to local governments, the concept of “just value” is embodied in the state’s statutory law as it is in the state constitution. Under Florida’s statutory law, the county property appraiser classifies all real property based on its use in reaching the “just value” of assessed property.<sup>66</sup> One of these classifications includes residential real property, which is further sub-classified into single-family, mobile homes, multifamily, condominiums, cooperatives and retirement homes.<sup>67</sup> The county property appraiser also must determine whether these sub-classifications of residential real property constitute homestead or non-homestead property for purposes of the homestead exemption.<sup>68</sup>

In arriving at the constitutionally and statutorily mandated “just value,”<sup>69</sup> the county property appraiser is statutorily required to consider the following factors when assessing real property:

- The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length.
- The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any

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<sup>65</sup> Sections 192.032(1), 192.043(1), F.S.

<sup>66</sup> Section 195.073, F.S.

<sup>67</sup> Section 195.073(1)(a), F.S.

<sup>68</sup> See Section 193.155, F.S., and discussion below regarding the statutory provisions of Florida’s homestead exemption.

<sup>69</sup> FLA. CONST. art. VII, § 4; Section 195.0012, F.S.

moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium.

- The location of said property.
- The quantity or size of said property.
- The cost of said property and the present replacement value of any improvements thereon.
- The condition of said property.
- The income from said property.
- The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.<sup>70</sup>

Once the county property appraiser has considered these factors and reached a just value, he or she must list the property on the county's assessment rolls,<sup>71</sup> prepare the assessment rolls (*i.e.*, include relevant information on the rolls such as classification and just value),<sup>72</sup> and submit the assessment rolls for final approval by the Department of Revenue.<sup>73</sup>

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<sup>70</sup> Section 193.011, F.S.

<sup>71</sup> Section 193.085, F.S.; *see also* Section 197.131, F.S.

<sup>72</sup> Section 193.114, F.S.

<sup>73</sup> Section 193.1142, F.S. In the event the rolls contain erroneous assessments, the county tax collector must notify the county property appraiser and, if the error constitutes a double assessment, may collect only the tax justly due. Section 197.131, F.S.

## 2. The Homestead Exemption and Ad Valorem Taxation of Residential Real Property

### a. Overview

Much of Florida's statutory law specifically applying to ad valorem taxation of residential real property deals with the homestead exemption.<sup>74</sup> The Florida statutes define "homestead" by direct reference to Article VII, § 6(a) of the Florida Constitution, which states that only persons with legal or equitable title<sup>75</sup> to real estate<sup>76</sup> and maintaining a permanent residence<sup>77</sup> on the property may claim a homestead exemption.<sup>78</sup> Any portion of the property used for commercial purposes does not qualify for the exemption; property rented for more than six months is presumed to be used for commercial purposes.<sup>79</sup>

Florida statutory law exempts homesteads in the following terms:

Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state, and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of \$5,000 on the residence and contiguous real property, as defined in Article VII, § 6 of the State Constitution.<sup>80</sup>

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<sup>74</sup> Many statutory provisions deal with the mechanics of property tax administration, such as the setting of millage rates (Section 200.001 *et seq.*, F.S.), reports (Section 193.052, F.S.) and payments (Section 197.333, F.S.). A detailed analysis of these provisions is beyond the scope of this report.

<sup>75</sup> Florida law describes instances where ownership other than fee simple ownership may permit a permanent resident of the property to qualify for the homestead exemption. Section 196.041, F.S. However, persons (other than members of the Armed Forces, *see* Section 196.071, F.S.) are deemed to abandon their previously claimed homestead exemption when they rent their entire dwelling to another. Section 196.061, F.S.; *see also City of Jacksonville v. Bailey*, 30 So. 2d 529 (Fla. 1947) (owner who rented his home for the winter was entitled to a homestead exemption because he did not abandon the homestead when he intended to return to it following his temporary absence).

<sup>76</sup> *See* Fla. Admin. Code 12D-7.0135 (describing homestead qualification for mobile homes).

<sup>77</sup> "Permanent resident" means a person who has his or her "true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred." Sections 196.012(17), 196.012(18), F.S.; *see also* Fla. Admin. Code 12D-7.007.

<sup>78</sup> Section, 192.001(8), F.S.

<sup>79</sup> Section 196.012(13), F.S.

<sup>80</sup> Section 196.031(1), F.S.

Florida has increased the homestead exemption from \$5,000 to \$25,000 for ad valorem taxes levied by counties, municipalities and school districts.<sup>81</sup>

In addition to the general homestead exemption discussed above, the legislature has enacted several special homestead exemptions for particular categories of homestead property owners, including low-income persons aged 65 and over;<sup>82</sup> disabled veterans and surviving spouses of veterans,<sup>83</sup> and totally and permanently disabled persons.<sup>84</sup>

**b. Constitutional Protection Afforded Homestead Property Owners Codified in the Florida Statutes**

**i. Taxpayer's Bill of Rights**

The constitutionally mandated Taxpayer's Bill of Rights lists twenty-one guaranteed rights afforded all taxpayers and applies to all taxes imposed under Florida law.<sup>85</sup> These rights "guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state."<sup>86</sup> Additionally, Florida has adopted a Taxpayer's Bill of Rights specifically applying to property taxes and assessments.<sup>87</sup> This latter bill of rights affords property taxpayers numerous rights, classified in four broad categories: (1) the right to know; (2) the right to due process; (3) the right to redress; and (4) the right to confidentiality.<sup>88</sup>

**ii. Tax Deferral**

The Homestead Property Tax Deferral Act<sup>89</sup> permits a homestead property owner to defer the portion of the property tax plus non-ad valorem assessments due on the

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<sup>81</sup> Section 196.031(3), F.S.

<sup>82</sup> Section 196.075, F.S.

<sup>83</sup> Sections 196.081, 196.091, F.S.

<sup>84</sup> Section 196.101, F.S.

<sup>85</sup> Section 213.015, F.S.

<sup>86</sup> *Id.*

<sup>87</sup> Section 192.0105, F.S.

<sup>88</sup> *Id.*

<sup>89</sup> Sections 197.242 -197.301, F.S.; enacted by ch. 77-301, Laws of Florida and as subsequently amended.

homestead that exceeds 5 percent of the applicant's household's income for the prior calendar year.<sup>90</sup> Applicants whose household income is less than \$10,000, and applicants 65 or older whose household income is less than \$23,463 (in 2006) may defer all property taxes and non-ad valorem assessments.<sup>91</sup> No tax deferral is granted, however, if the total amount of deferred taxes, assessments, and interest, plus the total amount of unsatisfied liens on the homestead exceeds 85 percent of its assessed value, or if the primary mortgage on the homestead exceeds 70 percent of its assessed value.<sup>92</sup>

### **iii. Save Our Homes**

The Save Our Homes amendment is codified in the Florida Statutes at § 193.155 and discussed above.<sup>93</sup>

### **3. Taxpayer Remedies**

Florida taxpayers aggrieved by a jurisdiction levying an ad valorem property tax have both administrative<sup>94</sup> and judicial remedies.<sup>95</sup> Consideration of the extensive statutory provisions, regulatory guidance and case law dealing with state remedies is beyond the scope of this report. We do, however, consider the state and federal constitutional issues regarding remedies in Part V of this report.

## **III. PROPERTY TAX ASSESSMENT LIMITATIONS IN STATES OTHER THAN FLORIDA**

### **A. Introduction**

Forty-three states impose rate, assessment, or revenue limitations on ad valorem property taxation.<sup>96</sup> State legislatures or electorates have various motivations for imposing these limitations, including prevention of excessive or inefficient government

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<sup>90</sup> Section 197.252 (2)(a), F.S.

<sup>91</sup> Section 197.252 (2)(b), F.S.

<sup>92</sup> Section 197.252 (3), F.S.

<sup>93</sup> The legislature enacted Section 193.155, F.S. with L. 1994, c. 94-353, § 62 and has subsequently amended this provision with L. 2001, c. 2001-137, § 5; L. 2006, c. 06-38, § 1; L. 2006, c. 06-311, § 1. The 2001 and 2006 legislation amended the provisions of Section 193.155, F.S., dealing with changes in ownership (subsection (3)(a)(3)), storm damage adjustments (subsection (4)) and erroneous assessments (subsection (8)(a)).

<sup>94</sup> See Sections 194.011, 194.015, 194.032, F.S.

<sup>95</sup> See Sections 194.171 - 194.301, F.S.

<sup>96</sup> Nathan B. Anderson, *Property Tax Limitations: An Interpretive Review*, 59 NAT'L TAX J. 685 (2006).

expenditures and assuring consistency in property owners' ad valorem tax payments.<sup>97</sup> Of these limitations, rate limitations are the most common with 34 states having adopted such restraints.<sup>98</sup> Twenty-nine states impose revenue limitations, *i.e.*, restraints on the annual increase in property tax revenues.<sup>99</sup> Twenty states impose property tax assessment limitations,<sup>100</sup> and twelve of these (including Florida) have statewide limitations on increases in the taxable values of individual residential properties.<sup>101</sup> In this Part of the report, we examine other states' constitutional or statutory limitations on property tax assessments that may be viewed as roughly analogous to Florida's Save Our Homes provision.

## B. Statewide Limitations on Assessment

States' limitations on property tax assessments typically contain one or more of the following characteristics: (1) the limitation is linked to the percentage change in annual assessment from a "base year's" assessment to the current tax year's assessment, generally 3 to 5 percent; (2) the limitation is available only to senior citizens, the disabled, or some other specially defined group of homestead property owners linked to some self-evident policy concern; (3) the limitation does not embrace improvements made to the homestead property after the base year assessment; (4) a transfer of the homestead property results in a reassessment of the homestead property and, accordingly, the former owner of such property cannot carry his or her prior assessment limitation to a newly acquired property; (5) homestead property owners must apply for the assessment limitation based on personal characteristics (*e.g.*, age or income level) that are conditions for qualification of the benefit. The ensuing discussion focuses on assessment limitations that are most similar to the Save Our Homes provision.

### 1. Arizona

Arizona limits the amount of property taxes collected from owner-occupied residential property in any tax year to 1 percent of the property's full cash value.<sup>102</sup> This limitation does not apply to (1) property taxes or special assessments levied to pay the principal, interest, and redemption charges on bonded indebtedness or other long-term obligations incurred for a specific purpose; (2) property taxes or special assessments

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 687.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* The twelve states are Arkansas, Arizona, California, Florida, Maryland, Michigan, Minnesota, Montana, New Mexico, Oklahoma, Oregon, and Texas. *Id.* at n.3.

<sup>102</sup> ARIZ. CONST. art. IX, § 18(1). "Residential property" includes all owner-occupied real property and improvements and all owner-occupied mobile homes used for residential purposes. *Id.* § 18(9)(b).

levied by or for property improvement assessment districts, improvement districts, and other special purpose districts; or (3) property taxes levied pursuant to an election to exceed a budget, expenditure, or tax limitation.<sup>103</sup> The state constitution also provides that a homestead property owner who is 65 years of age or older and meets specified income limitations may apply for “property valuation protection.”<sup>104</sup> If the county assessor approves the application, the value of the homestead will remain fixed at the full cash value in effect during the year in which the approval occurs.<sup>105</sup>

## 2. Arkansas

For the first assessment following reappraisal of a taxpayer's principal residence, Amendment 79 of the Arkansas Constitution limits any increase in the assessed value of the property to 5 percent of the assessed value of the property for the previous year.<sup>106</sup> In each year thereafter, the assessed value will increase by an additional 5 percent of the value for the year prior to the first assessment that resulted from reappraisal but must not exceed the assessed value determined by the reappraisal prior to adjustment.<sup>107</sup> This limitation does not apply to newly discovered real property, new construction, or to substantial improvements to real property.<sup>108</sup> Effective January 1, 2006, when a person transfers his or her real property, the property will be assessed at 20 percent of its appraised value at the next assessment date after the date of the transfer, and the new owner will not be entitled to claim any limitation on assessment under Amendment 79 until the second assessment after the date of the transfer.<sup>109</sup>

## 3. California

California’s Proposition 13 amended the state constitution to limit property taxes to 1 percent of 1975-76 valuations and to prohibit annual increases in valuations of more than 2 percent, except for property that is sold, newly constructed, or subject to a change in ownership, in which case it is reassessed at current appraised value.<sup>110</sup> The statute contains limited portability provisions for certain family and interspousal transfers<sup>111</sup> and

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<sup>103</sup> *Id.* § 18(2).

<sup>104</sup> *Id.* § 18(7).

<sup>105</sup> *Id.*

<sup>106</sup> ARK. CONST. amend. 79, § 1(c)(1).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* § 1(c)(2).

<sup>109</sup> ARK. CODE § 26-26-1123 (Westlaw 2006).

<sup>110</sup> CAL. CONST. art. XIII A, § 2.

<sup>111</sup> CAL. CONST. art. XIII A, §§ (2)(g), 2(h); CAL. REV. & TAX. CODE § 63, 63.1 (Westlaw 2006).

for persons over age 55 who acquire another property of equal or lesser value.<sup>112</sup> As we discuss below, the U.S. Supreme Court sustained Proposition 13 against federal constitutional attack under the Equal Protection Clause, but the Court held that the taxpayer did not have standing to challenge the portability provisions on residency-related or right-to-travel grounds.<sup>113</sup> There do not appear to have been any subsequent challenges to these portability provisions on residency-related or right-to-travel grounds.<sup>114</sup>

#### 4. Maryland

Although Maryland does not employ assessment limitations as such, the state and its political subdivisions must grant a credit against property tax on a “dwelling house” if there is an increase in assessment.<sup>115</sup> The credit is calculated by (1) multiplying the prior year's taxable assessment by the applicable homestead credit percentage; (2) subtracting that amount from the current year's assessment; and (3) if the difference is a positive number, multiplying the difference by the applicable state, county or municipal property tax rate for the current year.<sup>116</sup> For example, if the homestead credit percentage is 110 percent,<sup>117</sup> the prior year's taxable assessment is \$100,000, and the current year's taxable assessment is \$120,000, the difference of \$10,000 (*i.e.*, \$120,000 less \$110,000 [ $\$100,000 \times 110\%$ ]) is multiplied by the applicable state, county, or municipal tax rate to determine the credit. Accordingly, if the county tax rate were, for example, 2 percent,

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<sup>112</sup> CAL. CONST. art. XIII A § 3; CAL. REV. & TAX. CODE § 69.5 (Westlaw 2006).

<sup>113</sup> *Nordlinger v. Hahn*, 505 U.S. 1 (1992). See *infra* notes 182-89 and accompanying text (discussing *Nordlinger*).

<sup>114</sup> The family transfer provisions have raised primarily statutory issues; the age-based portability provision has been cited only twice in judicial decisions, each time in a case challenging the validity under California law of a movie theater's policy of providing senior citizen discounts, and each time the court rejected the challenge, citing Cal. Rev. & Tax Code § 69.5 for the proposition that “[a]ge-based distinctions often appear in statutory programs.” *Pizarro v. Lamb's Players Theatre*, 37 Cal. Rptr. 3d 859, 862 (Ct. App., 1<sup>st</sup> Dist. 2006); *Starkman v. Mann Theatres Corp.*, 278 Cal. Rptr. 543, 549 (Ct. App., 2<sup>nd</sup> Dist., 1991).

<sup>115</sup> MD. CODE ANN. TAX-PROP. § 9-105(b) (Westlaw 2006). Maryland's Attorney General consistently questioned the validity of prior versions of this credit under the state constitution's uniformity provision (MD. CONST. art. XV, Declaration of Rights). See, e.g., 72 Op. Atty. Gen. Md. 350 (11/11/1987) (“we agree with the view of our predecessors that the tax credit in TP § 9-105 [results] in a lack of uniformity that favors persons with valuable property”); see also Letter, Office of the Atty. Gen. (2/8/1990). In response to these letters, the state legislature subsequently cured the constitutional infirmity found in prior versions of the credit, and the Attorney General has not issued opinions questioning the constitutionality under state law of the current statute. There is no reported case law attacking the constitutionality under state law of either the current or previous version of the homestead credit.

<sup>116</sup> MD. CODE ANN. TAX-PROP. § 9-105(e) (Westlaw 2006).

<sup>117</sup> This is the percentage for the state property tax. *Id.* The percentage for the county property tax is determined by a more complicated procedure, but it may not be less than 100 percent or more than 110 percent. *Id.*

then the dwelling house credit against the county tax would be \$200 under the foregoing assumptions.

## 5. Nevada

Nevada limits a homestead property owner's tax increases to 3 percent of the tax bill of the homeowner for the previous year.<sup>118</sup>

## 6. New Mexico

The New Mexico Constitution provides that the state legislature must limit annual increases in the valuation of residential property for property taxation purposes.<sup>119</sup> The limitation can be applied to classes of residential property taxpayers based on owner occupancy, age, or income and can be authorized statewide or at the option of a local jurisdiction and can include conditions under which the limitation is applied.<sup>120</sup> Any valuation limitations the legislature authorizes as a local jurisdiction option must provide for applying statewide or multi-jurisdictional property tax rates to the value of the property as if the valuation increase limitation did not apply.<sup>121</sup>

For New Mexico's counties (1) whose sales ratio<sup>122</sup> for residential property is at least 85 percent for the 2000 tax year and (2) beginning with the property tax year following the year for which a county's sales ratio was at least 85 percent, those counties whose sales ratio for residential property is less than 85 percent for property tax year 2000, but whose sales ratio is at least 85 percent for any subsequent property tax year, the current and correct values of residential property for property tax years after 2001 are as follows:

- For homestead property owned by an individual who is 65 years of age or older on the valuation date, makes \$18,000 or less during the applicable property tax year, and who has properly claimed the limitation on increases in value, the valuation will be the lesser of (1) the current and correct value of the property or (2) the value of the property either in 2001 if the individual was then 65 years or

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<sup>118</sup> NEV. REV. STAT. § 361.4723 (Westlaw 2006).

<sup>119</sup> N.M. CONST. art. VIII, § 1(B).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> The sales ratio is defined as "the median ratio of value for property taxation purposes to sales price or independent appraisal." N.M. STAT. ANN. § 7-36-21.2(C) (Westlaw 2006).

older or, if subsequent to tax year 2001, the year in which the individual's 65th birthday occurred.<sup>123</sup>

- For residential property in any tax year in which (1) there was a change of ownership of the property in the year immediately prior to the tax year for which the value of the property for property tax purposes is being determined or (2) the use or zoning of the property has changed in the year prior to the tax year or the property is being valued for the first time, the valuation will be the current and correct value for the property.<sup>124</sup>
- For all other residential property, the valuation may not exceed the current and correct value for the property tax year, 103 percent of the sum of the property's value for the preceding year plus the contributory value of physical changes made to the property not already recognized in the property value, or 106.1 percent of the value in the tax year that is two years before the tax year in which the property is being valued plus the contributory value of physical changes made to the property not already recognized in the property value.<sup>125</sup>

## 7. Oklahoma

Effective January 1, 2005, the fair cash value of the Oklahoma homestead of an individual head of household who is 65 or older cannot exceed the fair cash value placed on the property the first year during which the head of household met the following income qualifications: “[t]he income threshold for the gross household income from all sources for an individual head of household can not exceed the amount determined by the United States Department of Housing and Urban Development to be the estimated median income for the preceding year for the county or metropolitan statistical area that includes the county at issue.”<sup>126</sup>

## 8. Texas

Texas homestead property owners that are either disabled or over 65 years of age enjoy a freeze on their property taxes on homesteads in the amount of tax imposed during the first year the homestead qualified for exemption.<sup>127</sup> In 1997, Texas amended its state

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<sup>123</sup> N.M. STAT. ANN. § 7-36-21.2(D) (Westlaw 2006); N.M. ADMIN. CODE § 3.6.5.24(B)(1) (Westlaw 2006).

<sup>124</sup> N.M. STAT. ANN. § 7-36-21.2(A)(3) (Westlaw 2006); N.M. ADMIN. CODE § 3.6.5.24(B)(2) (Westlaw 2006).

<sup>125</sup> N.M. STAT. ANN. § 7-36-21.2(A)(3) (Westlaw 2006); N.M. ADMIN. CODE § 3.6.5.24(B)(3) (Westlaw 2006).

<sup>126</sup> OKLA. CONST. art. X, § 8C.

<sup>127</sup> TEX. TAX CODE § 11.26(a) (Westlaw 2006); *see also* Op. of the Tex. Atty. Gen. No. MW-265 (11/6/1980) (clarifying the Texas Constitution authorizes only school districts to freeze property taxes on a

constitution to authorize the legislature to permit disabled persons or those 65 years of age or older to transfer their homestead “freeze” under certain circumstances.<sup>128</sup> As amended, the Texas Constitution provides, in relevant part:

The legislature, by general law, may provide for the transfer of all or a proportionate amount of a tax limitation provided by this subsection for a person who qualifies for the limitation and establishes a different residence homestead within the same county, within the same city or town, or within the same junior college district. A county, a city or town, or a junior college district that establishes a tax limitation under this subsection must comply with a law providing for the transfer of the limitation, even if the legislature enacts the law subsequent to the county's, the city's or town's, or the junior college district's establishment of the limitation. Taxes otherwise limited by a county, a city or town, or a junior college district under this subsection may be increased to the extent the value of the homestead is increased by improvements other than repairs and other than improvements made to comply with governmental requirements and except as may be consistent with the transfer of a tax limitation under a law authorized by this subsection. The governing body of a county, a city or town, or a junior college district may not repeal or rescind a tax limitation established under this subsection.<sup>129</sup>

If an individual who receives a limitation on tax increases (including a surviving spouse who receives a limitation) subsequently qualifies a different homestead for an exemption, a school district may not impose ad valorem taxes on the different homestead in a year in an amount greater than statutorily-specified amount.<sup>130</sup> Under Texas law, this limit is the amount of taxes the school district would have imposed on the subsequently qualified homestead had the limitation on tax increases not been in effect, multiplied by a fraction the numerator of which is the total amount of school district taxes imposed on the former homestead in the last year in which the individual received that exemption for the former homestead and the denominator of which is the total amount of school district taxes that would have been imposed on the former homestead in the last year in which the individual received that exemption for the former homestead had the limitation on tax increases not been in effect.<sup>131</sup>

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homestead of persons 65 years of age or older; thus, other taxing jurisdictions, e.g., cities or counties, cannot freeze the amount of property taxes they impose).

<sup>128</sup> Acts 1997, 75<sup>th</sup> Leg. Sess. H.J.R. No. 4 § 2(b).

<sup>129</sup> TEX. CONST. Article VIII, § 1-b(h).

<sup>130</sup> TEX. TAX CODE § 11.26(g) (Westlaw 2006).

<sup>131</sup> *Id.*

There is no reported Texas case law or other guidance bearing on the constitutionality under federal law of the portability provisions described above.<sup>132</sup>

### **C. Optional Limitations on Assessment**

Several states (including Georgia, Illinois, Massachusetts, and South Carolina) permit taxing jurisdictions to limit assessments or valuations under optional constitutional or statutory provisions.<sup>133</sup> But for the elective nature of these limitations, local option assessment limitations resemble the statewide limitations discussed above.

#### **1. Georgia**

Georgia residents 62 years of age or over may obtain a floating inflation-proof state and county homestead exemption, except for taxes to pay interest on and to retire bonded indebtedness, based on natural increases in the homestead's value.<sup>134</sup> Under this limitation, household income cannot exceed \$30,000.<sup>135</sup> This exemption does not affect any municipal or educational taxes and replaces any other state and county homestead exemption.<sup>136</sup>

#### **2. Illinois**

In any Illinois county that has elected to be subject to the provisions of the alternative general homestead exemption in lieu of the provisions of the general homestead exemption, homestead property is entitled to an annual homestead exemption equal to a reduction in the property's equalized assessed value calculated as provided below.<sup>137</sup>

“Adjusted homestead value” means the lesser of the following values:

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<sup>132</sup> The Texas Attorney General has addressed the general limitation of Texas Tax Code § 11.26(a), but not the transferability provision of Texas Tax Code § 11.26(g). In Opinion GA-0091 (8/20/2003), the Attorney General distinguished a “repair” from an “improvement” and found that the “term ‘repair’ does not include enhancements to a residence’s value.” Accordingly, the taxing jurisdiction could increase the property tax in proportion to the increase of the homestead’s value.

<sup>133</sup> Anderson, *supra* note 96, at 687-89.

<sup>134</sup> GA. CODE ANN. § 48-5-47.1(b) (Westlaw 2006).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* § 48-5-47.1(f).

<sup>137</sup> 35 ILL. COMP. STAT. § 200/15-176(a) (Westlaw 2006).

- The property's base homestead value increased by 7 percent for each tax year after the base year through and including the current tax year, or, if the property is sold or ownership is otherwise transferred, the property's base homestead value increased by 7 percent for each tax year after the year of the sale or transfer through and including the current tax year.
- The property's equalized assessed value for the current tax year minus \$5,000 in all counties.<sup>138</sup>

Generally, “base homestead value” means the equalized assessed value of the property for the base year prior to exemptions, minus \$5,000, provided the taxing jurisdiction assessed the property as residential property qualified for any of the homestead exemptions under Illinois law.<sup>139</sup> However, if the property is sold or ownership is otherwise transferred (other than sales or transfers between spouses or between a parent and a child), “base homestead value” means the equalized assessed value of the property at the time of the sale or transfer prior to exemptions, minus \$5,000, provided that the taxing jurisdiction assessed the property as residential property qualified for any of the homestead exemptions under Illinois law.<sup>140</sup>

#### **IV. FEDERAL CONSTITUTIONAL CONSTRAINTS ON STATE AND LOCAL AD VALOREM PROPERTY TAXATION: OVERVIEW**

##### **A. Introduction**

Although one could write a treatise on the federal constitutional constraints on state and local taxation,<sup>141</sup> our discussion of these restraints in this report must be more abbreviated. Our precise goal in this Part of the report is to provide an overview of the federal constitutional restraints that generally limit state and local taxation with a particular focus on those restraints that have a significant bearing on state and local ad valorem property taxation. In Part V of this report, we consider the application of these restraints to the proposed constitutional amendments to the Florida Constitution bearing on the Save Our Homes provision and the homestead exemption.

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<sup>138</sup> *Id.* § 200/15-176(b)(2).

<sup>139</sup> *Id.* § 200/15-176(b)(3)(A).

<sup>140</sup> *Id.* § 200/15-176(b)(3)(B).

<sup>141</sup> Indeed, one of the co-authors of this report already has. See generally JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, *STATE TAXATION*, vols. I & 2 (3<sup>rd</sup> ed. 1998 & Cum. Supp. 2006).

## **B. The Significance of the Distinction Between *State* and *Local* Taxation For Federal Constitutional Purposes**

Because property taxes typically are *local* rather than *state* taxes,<sup>142</sup> it is important at the outset to recognize the significance – or lack thereof – of the distinction between state and local taxes for federal constitutional purposes. There are two general points to keep in mind with respect to this distinction. First, insofar as a federal constitutional restraint limits state taxation, it is irrelevant whether the taxation in question is that of the state itself or that of a political subdivision of a state (*e.g.*, a county taxing authority). The federal constitutional restraints apply in the same manner to both.<sup>143</sup> Second, federal constitutional restraints on state and local taxation have no bearing on how a state chooses to allocate taxing power between itself and its political subdivisions or among its political subdivisions. In other words, federal constitutional restraints are evaluated at the state level, not at the local level. We elaborate briefly on the each of these not wholly unrelated propositions below.

### **1. Federal Restraints on “State” Taxation Apply With Full Force to Local Taxes**

Each of the federal constitutional restraints that we will be considering in more detail below is directed to limits on “state” action.<sup>144</sup> It is well settled, however, that any action by a political subdivision of a state is subject to the same restraints that would be imposed on the state itself if the state itself had taken the challenged action in question. Because political subdivisions of a state are creatures of the state, their exercises of tax power are treated as the exercise of state tax power and adjudicated according to the standards restraining the exercise of state tax power. In short, the fact that the state tax power is exercised by a political subdivision of the state rather than by the state itself is of

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<sup>142</sup> In fact, in Florida, the state is precluded from levying property taxes. FLA. CONST. art. VII, § 1(a).

<sup>143</sup> This is not to suggest that states and localities are always treated the same way for federal constitutional purposes. *See, e.g., DaimlerChrysler, Inc. v. Cuno*, 126 S. Ct. 1854 (2006) (distinguishing between state-taxpayer and municipal-taxpayer standing for purposes of federal jurisdiction under Article III of the Constitution).

<sup>144</sup> The Import-Export Clause provides that “No *State* shall ... lay any Imposts or Duties on Imports or Exports ...,” U.S. CONST. art. I, § cl. 2 (emphasis supplied); the Commerce Clause provides that “The Congress shall have power ... [t]o regulate Commerce ... among the several *States* ...,” U.S. CONST. art. I, § 8, cl. 3 (emphasis supplied); the “interstate” Privileges and Immunities Clause provides that “The Citizens of each *State* shall be entitled to all Privileges and Immunities of Citizens in the several *States*,” U.S. CONST. art. IV, § 2 (emphasis supplied); the Privileges of the Fourteenth Amendment provides that “No *State* shall make ... any law which shall abridge the privileges or immunities of citizens of the United States,” U.S. CONST. amend. XIV, § 1 (emphasis supplied); the Equal Protection Clause provides that “Nor shall any *State* ... deny to any person within its jurisdiction the equal protection of the laws,” U.S. Const. amend. XIV, § 1 (emphasis supplied); the Due Process Clause of the Fourteenth Amendment provides that “Nor shall any *State* ... deprive any person of life, liberty, or property, without due process of law,” U.S. CONST. amend. XIV, § 1 (emphasis supplied).

no constitutional moment. Indeed, many of the decisions delineating the constitutional limitations on “state” taxation involved local taxes.<sup>145</sup>

## 2. Federal Constitutional Restraints Are Evaluated at the State Level, Not the Local Level

Consistent with the language of the federal constitutional restraints on state action which is directed to the exercise of power by the state (whether exercised directly or indirectly through a political subdivision),<sup>146</sup> these restraints do not limit the way the state exercises power “internally,” at least insofar as the question relates to the distribution of taxing or other government power within the state. The Supreme Court articulated the controlling principles many years ago in *Hunter v. City of Pittsburgh*.<sup>147</sup> In *Hunter*, residents of the City of Allegheny complained that its annexation by the City of Pittsburgh pursuant to state law deprived them of their property without due process by subjecting it to the additional burden of taxation. In substance, they argued that the method of voting on the consolidation permitted the voters of the larger city (Pittsburgh) to overpower the voters of the smaller city (Allegheny) and thus to compel the annexation without their consent. In rejecting this claim, the Court declared:

We think the following principles have been established ...and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations *and the territory over which they shall be exercised rests in the absolute discretion of the state*. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. *The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even*

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<sup>145</sup> See, e.g., *Nippert v. City of Richmond*, 327 U.S. 416 (1946) (invalidating local license tax under Commerce Clause because it discriminated against out-of-state businesses); *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989) (invalidating local property tax under Equal Protection Clause because it treated similar properties differently without rational basis); cf. *United Building and Construction Trades Council v. Mayor and Council of Camden*, 465 U.S. 208 (1984) (local ordinance favoring local residents subject to Privileges and Immunities Clause scrutiny).

<sup>146</sup> See *supra* note 144.

<sup>147</sup> 207 U.S. 161 (1907).

against their protest. *In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.* Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.<sup>148</sup>

### C. Federal Constitutional Restraints Explicitly Directed to State Taxation

Only two provisions of the Constitution speak directly to the scope of state tax power, the Import-Export Clause<sup>149</sup> and the Duty of Tonnage prohibition.<sup>150</sup> Although the

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<sup>148</sup> *Id.* at 178-79 (emphasis supplied). See also *Kelly v. Pittsburgh*, 104 U.S. 78, 81 (1891) (rejecting due process challenge to city taxes on property that lay outside city's water, gas, and street improvements for which taxes were paid on ground that these "are questions which arise between the citizens of those States and their own city authorities, and afford no rule for construing the Constitution of the United States"). In *Aldens v. Tully*, 404 N.E.2d 703 (N.Y. 1980), *appeal dismissed*, 449 U.S. 802 (1980) the court held that out-of-state vendor with nexus in state may not raise federal constitutional objection to *local* tax collection obligation:

[S]imply because there are constitutional limitations on the burdens which may be placed on interstate commerce, it does not follow, nor is there any precedent for holding, that that burden is to be measured by further compartmentalization of each state into its municipal subdivisions. No historical predicate is advanced to indicate that in assuring protection of commerce among the several States, any such intrastate partitioning was contemplated, and petitioner cites no Supreme Court cases so holding.

*Id.* at 707-08. See also *Diamond Shamrock Refining & Marketing Co. v. Nueces County*, 876 S.W.2d 298 (Tex. 1994), *cert. denied*, 513 U.S. 995 (1994) (Import-Export Clause prohibition on state taxes on goods in transit from one state to another does not bar local tax on goods in transit from one local taxing jurisdiction to another, so long as goods are in state of final destination and thus subject to tax at state level); *Allegro Services, Ltd. v. Metropolitan Pier and Exposition Authority*, 665 N.E.2d 1246 (Ill. 1996) (sustaining local airport tax over Commerce Clause objection on ground that the constitutionality of the tax must be analyzed at the state level).

<sup>149</sup> U.S. CONST. art. I, § 10, cl. 2. The Import-Export Clause provides:

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's [*sic*] Inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

<sup>150</sup> U.S. CONST. art. I, § 10, cl. 3 ("[n]o State shall, without the Consent of Congress, lay any Duty of Tonnage"). A "Duty of Tonnage" includes "all taxes and duties regardless of their name or form, even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of

former imposes some limits on state personal property taxation,<sup>151</sup> neither of these provisions has any bearing on ad valorem taxation of homestead property, and we therefore do not consider these provisions any further in this report.

#### **D. Other Federal Constitutional Restraints on State Taxation**

The federal constitutional provisions that are most relevant to state ad valorem taxation of homestead property are directed to concerns far broader than taxation alone. These include the Equal Protection Clause,<sup>152</sup> the Commerce Clause,<sup>153</sup> the Privileges and Immunities Clauses,<sup>154</sup> and the Due Process Clause,<sup>155</sup> and we consider each of these restraints below, as well as the right to travel, which is derived from several of these clauses.

##### **1. The Equal Protection Clause**

The Equal Protection Clause provides that a state may not “deny to any person within its jurisdiction the equal protection of the laws.”<sup>156</sup> The U.S. Supreme Court has construed the clause as prohibiting the states from making unreasonable classifications for tax and other purposes. Beginning with its early decisions interpreting the Equal Protection Clause, however, the Court established that the clause affords the states broad leeway in drawing classifications for tax purposes:

In its exercise of taxation ... it is competent for a State to exempt certain kinds of property and tax others, the restraints upon it only being against “clear and hostile discriminations against particular persons and classes.” Discriminations merely are not inhibited, for, it was recognized, that there are “discriminations which the best interests of society require.”<sup>157</sup>

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entering, trading in, or lying in a port.” *Clyde Mallory Lines v. Alabama ex rel. State Docks Comm’n*, 296 U.S. 261, 265-66 (1935) (citations omitted).

<sup>151</sup> Under the U.S. Supreme Court’s contemporary Import-Export Clause doctrine, the clause forbids the states from imposing taxes that discriminate against imports or exports on the basis of their foreign origin or destination or that are imposed on goods in import or export transit. *See generally* HELLERSTEIN & HELLERSTEIN, *supra* note 141, ¶ 5.01et seq.

<sup>152</sup> U.S. CONST. amend. XIV, § 1.

<sup>153</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>154</sup> U.S. CONST. art. IV, § 2; U.S. Const. amend. XIV, § 1.

<sup>155</sup> U.S. CONST. amend. XIV, § 1.

<sup>156</sup> U.S. CONST. amend. XIV, § 1.

<sup>157</sup> *Heisler v. Thomas Colliery Co.*, 260 U.S. 245, 255 (1922) (quoting *Bell’s Gap RR v. Pennsylvania*, 134 U.S. 232, 237 (1890)). In an often-quoted passage, the Court declared:

As the Court subsequently observed: “Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.”<sup>158</sup>

State tax statutes do not ordinarily involve “any suspect classification or the deprivation of any fundamental constitutional right”<sup>159</sup> that gives rise to special scrutiny under the Equal Protection Clause. Accordingly, the only equal protection inquiry in most tax cases is simply whether “the State’s classification is ‘rationally related to the State’s objective.’”<sup>160</sup> Under these standards, it is not surprising that the Court has rarely invalidated a state tax statute under the Equal Protection Clause. Thus, the Court has sustained classified property taxes, declaring that a “State may tax real and personal property in a different manner”<sup>161</sup> and holding that states may tax the property of utilities differently from the property of other taxpayers.<sup>162</sup> The Court has also sustained taxes applied to commercial but not private warehouses,<sup>163</sup> to anthracite but not bituminous coal,<sup>164</sup> to sales of gas by independent gas marketers but not by local distribution

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The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.

*Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-27 (1959) (citations omitted).

<sup>158</sup> *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973).

<sup>159</sup> *Harrah Indep. Sch. Dist. v. Martin*, 440 U.S. 194, 198 (1979).

<sup>160</sup> *Id.* at 199 (quoting *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 315 (1976)).

<sup>161</sup> *Ohio Oil Co. v. Conway*, 281 U.S. 146, 159 (1929).

<sup>162</sup> *Nashville C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940).

<sup>163</sup> *Independent Warehouses, Inc. v. Scheele*, 331 U.S. 70 (1947).

<sup>164</sup> *Heisler v. Thomas Colliery Co.*, 260 U.S. 245 (1922).

companies,<sup>165</sup> and to trucks hauling for hire at higher rates than trucks hauling not for hire.<sup>166</sup>

In some cases, however, state taxes *do* implicate suspect classifications and fundamental rights.<sup>167</sup> In such cases, the Equal Protection Clause demands more rigorous scrutiny of the state tax classification than the relaxed “rational basis” standard. In this connection the U.S. Supreme Court’s most recent state tax decision involving the Equal Protection Clause, *Fitzgerald v. Racing Association of Central Iowa*,<sup>168</sup> is quite instructive. On the one hand, the Court went out of its way to reaffirm the freedom that the states enjoy in drawing lines for tax purposes under rational-basis review when no suspect classifications are involved. Taking the relatively unusual step of granting a *state’s* petition for certiorari from a decision invalidating a state tax classification on equal protection grounds, the Court reversed the state court decision and held that the Iowa legislature could rationally impose a lower tax rate on riverboat slot machines than on racetrack slot machines. The Court held that the rate differential was rationally related to the objective of encouraging the economic development of riverboat communities, promoting riverboat history, and protecting the reliance interests of the riverboat operators.<sup>169</sup> At the same time, however, the Court was careful to point out that the Iowa scheme “does not distinguish on the basis of, for example, race or gender,”<sup>170</sup> or “between in-state and out-of-state businesses.”<sup>171</sup> Moreover, in justifying its application of “rational basis” review to the Iowa tax classification, the Court declared: “Neither does it favor a State’s long-time residents at the expense of residents who have more recently arrived from other States.”<sup>172</sup>

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<sup>165</sup> *General Motors Corp. v. Tracy*, 519 U.S. 278 (1997).

<sup>166</sup> *Dixie Ohio Express Co. v. State Revenue Comm’n*, 306 U.S. 72 (1938). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176, 195-96 (1983) (sustaining royalty owner exemption from (and prohibition of pass-through of) tax increase and observing that “[b]ecause neither of the challenged provisions adversely affects a fundamental interest or contains a classification based upon a suspect criterion, they need only be tested under the lenient standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters”).

<sup>167</sup> See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (invalidating tax on right to vote under Equal Protection Clause).

<sup>168</sup> 539 U.S. 103 (2003).

<sup>169</sup> *Id.* at 109. The Court also rejected the state court’s analysis that the rate differential failed equal protection scrutiny on the ground that it frustrated the law’s basic objective of rescuing the racetracks from fiscal distress. The Iowa court’s decision rested on the unsound premise that “every provision in a law must share a single objective.” *Id.*

<sup>170</sup> *Id.* at 107.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* (emphasis supplied, citing *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985)), discussed *infra* notes 377-78 and accompanying text).

**a. Discrimination in Real Property Tax Assessments**

Because this report is addressed to ad valorem property taxation, the most important equal protection cases for purposes of this report are those addressing the constitutionality of discrimination in real property tax assessments. Two cases decided roughly 25 years ago provide the framework for the constitutional analysis.

**i. Assessment Regimes Based on Market Value**

In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*,<sup>173</sup> the U.S. Supreme Court held that the widespread practice of assessing newly purchased property on the basis of the property's recent sales price is constitutionally unacceptable when no adjustment is made with respect to comparable unsold properties to reflect current value. The taxpayers owned parcels of recently purchased coal-bearing lands that were assessed and taxed at approximately 35 times the rate applied to comparable property that had not been recently sold. The taxpayers claimed that the assessor's policy of assessing property based on its recent sale price systematically discriminated against such property in comparison to similar property that had not been recently sold and therefore violated the Equal Protection Clause.

In sustaining the taxpayers' claims, the Court observed that the county assessor made no attempt to justify the disparities in assessment on the theory that recently sold and unsold property constituted two different classes of property that were to be treated differently as a matter of deliberate policy. Indeed, the contrary was true: West Virginia's Constitution and implementing statutes provided that all the property in question was to be taxed at a uniform rate throughout the state according to its market value. Given the state's own professed adherence to a standard of uniformity and equality of property assessments based on market value, the county assessor's reliance on the occurrence of a sale as the basis for achieving such equality could not pass constitutional muster.

The Court made it clear that states need not reappraise every parcel every year to satisfy the constitutional demand of equal treatment of similarly situated taxpayers or property. It noted that "use of a general adjustment as a transitional substitute for an individual appraisal violates no constitutional command."<sup>174</sup> It further observed that "[a]s long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied."<sup>175</sup>

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<sup>173</sup> 488 U.S. 336 (1989).

<sup>174</sup> *Id.* at 343.

<sup>175</sup> *Id.*

The vice of the assessor's method of adjusting values based on recently purchased property, however, was that it was not an example of "transitional delay."<sup>176</sup> Rather, it was a practice that essentially ignored changes in value of unsold property for extended periods. The Court therefore found that the taxpayers had suffered intentional discrimination. Because "intentional systematic undervaluation by state officials of other property in the same class contravenes the constitutional right of one taxed upon the full value of his property,"<sup>177</sup> the Court concluded that the "relative undervaluation of comparable property in Webster county ... over time" denied the taxpayers equal protection of the law.<sup>178</sup>

**ii. Assessment Regimes Based on Acquisition Value: California's Proposition 13**

The Court's decision in *Allegheny* appeared to raise serious questions about the constitutionality of California's Proposition 13.<sup>179</sup> Proposition 13 amended the state constitution to limit property taxes to 1 percent of 1975-76 valuations and to prohibit annual increases in valuations of more than 2 percent, except for property that is sold, newly constructed, or subject to a change in ownership, in which case it is reassessed at current appraised value. The Court in *Allegheny* was well aware of the potential implications of its decision for California's taxing system, and it observed in a footnote:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy ... popularly known as "Proposition 13." ... The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of property.<sup>180</sup>

The Court appeared to be suggesting that Webster County's discrimination against recently purchased property might be distinguishable from California's because the former reflected the "aberrational" actions of a single assessor, contrary to the policy of West Virginia to tax all property equally, whereas the latter reflected the considered policy of a state. However, the implications of that distinction are by no means self-evident. Indeed, one might reasonably have thought that the Equal Protection Clause

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<sup>176</sup> *Id.* at 344.

<sup>177</sup> *Id.* at 345. See also *Hillsborough v. Town of Cromwell*, 326 U.S. 620 (1946); *Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23, 28-29 (1931); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445-46 (1923); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53 (1918).

<sup>178</sup> *Allegheny*, 488 U.S. at 346.

<sup>179</sup> CAL. CONST. art. XIII A, § 2.

<sup>180</sup> *Allegheny*, 488 U.S. at 344-45 n. 4.

is *less* offended by discrimination resulting from the aberrational actions of a single individual than by discrimination that reflects deliberate state policy.

Nevertheless, the opposite view is deeply rooted in equal protection doctrine. The Equal Protection Clause, after all, protects only against unjustifiable discrimination. As we have already observed,<sup>181</sup> for tax classifications that do not implicate federal concerns apart from equal protection, “rational basis” is the standard of justification. Accordingly, if the discrimination has a “rational basis,” it will not violate the Equal Protection Clause.

In fact, in *Nordlinger v. Hahn*,<sup>182</sup> the Court sustained the constitutionality of Proposition 13 under the Equal Protection Clause. Stephanie Nordlinger had purchased a house in Los Angeles for \$170,000 after moving from rental property in the area. The house was assessed for real property tax purposes at the price she paid for it. She later discovered that she was paying about five times more in taxes than some of her neighbors who owned comparable homes since 1975, and whose assessments had been limited by Proposition 13. Nordlinger challenged the constitutionality of the assessments under the Equal Protection Clause, Nordlinger claiming, among other things, that the discriminatory classification was subject to “heightened scrutiny because it infringes upon the constitutional right to travel.”<sup>183</sup> The Court acknowledged this contention, observing that “petitioner alleges that the exemptions to reassessment for transfers by owners over the age of 55 and for transfers between parents and children run afoul of the right to travel, because they classify directly on the basis of California residency.”<sup>184</sup> However, the Court held that Nordlinger lacked standing to raise the right to travel claim, because her move was intrastate.

Once the Court dismissed the right to travel claim in *Nordlinger*, the remaining issue before it was the constitutionality under the Equal Protection Clause of discriminatory assessments resulting from an acquisition value based property tax system. The Court found that the “rational basis” standard was appropriate for adjudicating the constitutionality of such a system. Accordingly, the only question was “whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest,”<sup>185</sup> a standard that “is satisfied so long as there is a plausible policy reason for the classification.”<sup>186</sup> The Court had “no difficulty”<sup>187</sup> in ascertaining

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<sup>181</sup> See *supra* notes 156-66 and accompanying text.

<sup>182</sup> 505 U.S. 1 (1992).

<sup>183</sup> *Id.* at 10.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 11.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 12.

“at least two rational bases for the tax discrimination at issue: first, “the State has a legitimate interest in local neighborhood preservation”;<sup>188</sup> second, “the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner.”<sup>189</sup>

Even though the impact of California’s ad valorem taxing scheme was indistinguishable in practical effect from the West Virginia scheme invalidated in *Allegheny*, the Court distinguished *Allegheny* on the ground that, in contrast to the purposes that could have conceivably been the basis for California’s regime, there was “an absence of any indication in *Allegheny* that the policies underlying an acquisition value taxation scheme could conceivably have been the purpose of the Webster County assessor’s unequal assessment scheme.”<sup>190</sup> *Allegheny* was therefore narrowly construed as “the rare case where the facts precluded any plausible inference that the reasons for the unequal assessment practice was to achieve the benefits of an acquisition value system.”<sup>191</sup>

## 2. The Commerce Clause

The Commerce Clause by its terms is no more than an affirmative grant of power to Congress “to regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes.”<sup>192</sup> Nevertheless, from the very beginning of our constitutional history, the U.S. Supreme Court elaborated the view that “became central to our whole constitutional scheme: the doctrine that the commerce clause, by its own force and without national legislation, puts it into the power of the Court to place limits upon state authority.”<sup>193</sup> This is the so-called “dormant” or “negative” Commerce Clause.

The history of the development of the Court’s dormant Commerce Clause doctrine lies beyond the scope of this report.<sup>194</sup> For present purposes, it suffices to say

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<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 15.

<sup>191</sup> *Id.* at 16. For a comprehensive analysis of the constitutional issues raised by acquisition-value of real property taxation written shortly after *Nordlinger* was decided, see Mary LaFrance, *Constitutional Implications of Acquisition-Value Real Property Taxation: The Elusive Rational Basis*, 1994 UTAH L. REV. 817; Mary LaFrance, *Constitutional Implications of Acquisition-Value Real Property Taxation: Assessing the Burdens on Travel and Commerce*, 1994 UTAH L. REV. 1027.

<sup>192</sup> U.S. CONST. art I, § 8, cl. 3.

<sup>193</sup> FELIX FRANKFURTER, *THE COMMERCE CLAUSE UNDER MARSHALL, TANEY AND WAITE* 18–19 (Quadrangle Paperback ed. 1964).

<sup>194</sup> It is recounted in HELLERSTEIN & HELLERSTEIN, *supra* note 141, at ¶¶ 4.06 – 4.11.

that the Court distilled its Commerce Clause doctrine into four operating principles in the 1977 case of *Complete Auto Transit, Inc. v. Brady*.<sup>195</sup> In *Complete Auto*, the Court stressed those factors that were germane to the validity of a state tax under the Commerce Clause in light of the Court's contemporary understanding of the clause. First, the tax must be applied to an activity that has a substantial nexus with the state. Second, the tax must be fairly apportioned to activities carried on by the taxpayer in the state. Third, the tax must not discriminate against interstate commerce. Fourth, the tax must be fairly related to services provided by the state. In virtually every Commerce Clause opinion it has rendered subsequent to *Complete Auto*, the Court has faithfully reiterated and adhered to the four-part test articulated in that opinion, a test the Court has characterized as a "consistent and rational method of inquiry" that looks to "the practical effect of a challenged tax" on interstate commerce.<sup>196</sup> In the Court's view, its contemporary Commerce Clause state tax jurisprudence is grounded in "economic realities,"<sup>197</sup> wedded to "pragmatism,"<sup>198</sup> disdainful of "formalism,"<sup>199</sup> and contemptuous of "'magic words and labels.'"<sup>200</sup>

The threshold question in every Commerce Clause case is whether the state tax or regulation that is attacked as violating substantive Commerce Clause criteria even triggers Commerce Clause scrutiny, i.e., whether the challenged tax or regulation involves interstate (as distinguished from local) commerce. This threshold question may be of particular relevance to any Commerce Clause challenge to homestead exemptions or assessment limitations, because one may contend that property taxes are inherently "local" and rules relating to such taxes therefore are not subject to scrutiny under *Complete Auto*'s four-part test.

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<sup>195</sup> 430 U.S. 274 (1977).

<sup>196</sup> *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425, 443 (1980). See, e.g., *American Trucking Associations, Inc. v. Michigan Public Service Commission*, 545 U.S. 429, 438 (2005); *Fulton Corp. v. Faulkner*, 516 U.S. 325, 331, (1996); *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 183 (1995); *Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 310–11 (1994); *Quill Corp. v. North Dakota*, 504 U.S. 298, 310 (1992); *Trinova Corp. v. Michigan Dep't of Treasury*, 498 U.S. 358, 372 (1991); *Amerada Hess Corp. v. Director, Division of Taxation*, 490 U.S. 66, 72 (1989); *Goldberg v. Sweet*, 488 U.S. 252, 259–60 (1989); *D.H. Holmes Co. v. McNamara*, 486 U.S. 24, 30 (1988); *American Trucking Ass'n, Inc. v. Scheiner*, 483 U.S. 266, 291 (1987); *Wardair Canada, Inc. v. Florida Dept. of Revenue*, 477 U.S. 1, 8 (1986); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 617 (1981); *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981); *Mobil*, 445 U.S. at 443; *Washington Dept. of Revenue v. Association of Washington Stevedoring Cos.*, 435 U.S. 734, 745 (1978).

<sup>197</sup> *Complete Auto*, 430 U.S. at 279.

<sup>198</sup> *Quill*, 504 U.S. at 310.

<sup>199</sup> *Trinova*, 498 U.S. at 373.

<sup>200</sup> *Quill*, 504 U.S. at 310 (quoting *Railway Express Agency, Inc. v. Virginia*, 358 U.S. 434, 441 (1959)).

Although the Court for many years drew lines between “interstate” and “local” activities that immunized taxes affecting such activities as mining, manufacturing, and making of contracts from Commerce Clause scrutiny,<sup>201</sup> in its modern Commerce Clause decisions the Court has come to recognize that any tax that substantially *affects* interstate commerce must be evaluated under the Court’s substantive Commerce Clause criteria regardless of what once may have been regarded as the limitations on the definition of “commerce.” In *Commonwealth Edison Co. v. Montana*,<sup>202</sup> the Court considered the constitutionality of Montana’s 30 percent severance tax on coal that allegedly discriminated against interstate commerce because virtually all of the coal severed in Montana was destined for out-of-state consumption. The state court had held that the tax was not subject to Commerce Clause scrutiny because severance was “an intrastate activity preceding the entry of the coal into interstate commerce.”<sup>203</sup>

In rejecting this approach, the Court observed that it had “long ... rejected any suggestion that a state tax or regulation affecting interstate commerce is immune from Commerce Clause scrutiny because it attaches only to a ‘local’ or ‘intrastate’ activity.”<sup>204</sup> Rather, the Court’s goal “[i]n reviewing Commerce Clause challenges to state taxes ... has instead been to ‘establish a consistent and rational method of inquiry’ focusing on ‘the practical effect of a challenged tax,’”<sup>205</sup> – namely, the *Complete Auto* test. Consequently, even though taxes may be levied on local activities that may not be regarded as interstate commerce, such taxes “may substantially affect interstate commerce, and this effect is within the proper focus of Commerce Clause inquiry.”<sup>206</sup> The Court in *Commonwealth Edison* therefore applied *Complete Auto*’s four-part test to Montana’s coal severance tax, and it concluded that the tax was constitutional.

Given the Court’s broad view of the scope of what “affects” commerce, it will be the rare case in which any serious claim can be made that a tax is immune from scrutiny under substantive Commerce Clause standards, as long as the property, activity, or enterprise on which the tax is imposed has some connection with interstate commerce. For example, the Court has sustained as a legitimate exercise of Congress’ power to regulate interstate commerce (1) the amount of wheat a farmer can grow for his own consumption,<sup>207</sup> (2) discriminatory practices in local hotels and restaurants,<sup>208</sup> and (3) local criminal activity.<sup>209</sup>

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<sup>201</sup> These cases are discussed in HELLERSTEIN & HELLERSTEIN, *supra* note 141, at ¶ 4.04.

<sup>202</sup> 453 U.S. 609 (1981).

<sup>203</sup> *Id.* at 613-14.

<sup>204</sup> *Id.* at 615.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 616.

<sup>207</sup> *Wickard v. Filburn*, 317 U.S. 111 (1942),

<sup>208</sup> *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Hotel v. United States*, 379 U.S. 241 (1964).

It has also observed that “the same interstate attributes that establish Congress’ power to regulate commerce also support constitutional limitations on the powers of the States,”<sup>210</sup> and that “the definition of ‘commerce’ is the same when relied on to strike down or restrict state legislation as when relied on to support some exertion of federal control or regulation.”<sup>211</sup> To be sure, there may be some instances in which a tax is imposed on an activity so attenuated from the common understanding of “commerce” that it will not be subjected to Commerce Clause review.<sup>212</sup> In recent years, however, the threshold question of the application of the Commerce Clause to a state tax alleged to burden commerce has seldom even been raised and, when it has been, courts almost invariably find that the tax should be evaluated under substantive Commerce Clause criteria.

The Court’s 1997 decision in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*<sup>213</sup> illustrates the breadth of the Court’s view of interstate commerce that is subject to scrutiny under the dormant Commerce Clause and has particular relevance to Commerce Clause challenges to ad valorem property taxes. In *Camps Newfound*, the Court rejected the argument that the Commerce Clause did not apply to the claim that a statute discriminated against interstate commerce by denying a property tax exemption to charitable institutions that were operated principally for persons who were not in-state residents. The taxing authority contended that the denial of the exemption to a summer camp that served mostly residents of other states was not cognizable under the Commerce Clause (a) because campers are not “articles of commerce,”; (b) because the camp’s product was delivered and consumed entirely in Maine; and, most significantly for present purposes, (c) because the controversy involved a real estate tax.

The Court observed that even though the camp did not make a profit it was “unquestionably engaged in commerce, not only as a purchaser, but also as a provider of goods and services.”<sup>214</sup> The Court noted that the camp marketed its services across the country and that “[t]he attendance of these campers necessarily generates the transportation of persons across state lines that has long been recognized as a form of ‘commerce.’”<sup>215</sup> The

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<sup>209</sup> *Perez v. United States*, 402 U.S. 146 (1971).

<sup>210</sup> *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 39 (1980).

<sup>211</sup> *Hughes v. Oklahoma*, 441 U.S. 322, 326 n.2 (1979).

<sup>212</sup> See *United States v. Morrison*, 529 U.S. 598 (2000) (Congress lacks the power under the Commerce Clause to provide a civil remedy for victims of gender-motivated violence because gender-motivated crimes do not substantially affect interstate commerce); *United States v. Lopez*, 514 U.S. 549 (1995) (Congress lacks the power under the Commerce Clause to prohibit possession of firearms in school zones because possession of a gun in a local school zone does not affect interstate commerce).

<sup>213</sup> 520 U.S. 564 (1997).

<sup>214</sup> *Id.* at 573.

<sup>215</sup> *Id.*

court analogized the summer camps to hotels that offer their guests goods and services that are consumed locally. The Court thus relied on *Heart of Atlanta Motel, Inc. v. United States*,<sup>216</sup> where it had recognized that “commerce was substantially affected by private race discrimination that limited access to the hotel and thereby impeded interstate commerce in the form of travel.”<sup>217</sup> The Court found that discrimination limiting the access of nonresidents to summer camps created a similar impediment.

Even though *Heart of Atlanta* involved the scope of *congressional* power to regulate interstate commerce under the Commerce Clause whereas *Camps Newfound* involved the “negative” Commerce Clause, the Court reiterated that its contemporary Commerce Clause jurisprudence treats these two inquiries the same.<sup>218</sup> In light of the Court’s broad view of the definition of “interstate commerce” under the congressional regulatory cases, the Court had little difficulty concluding in *Camps Newfound* that the services that the camp provided to out-of-state campers “clearly have a substantial effect on commerce, as do state restrictions on making those services available to nonresidents.”<sup>219</sup>

Finally, the Court rejected the taxing authority’s claims that the dormant Commerce Clause was inapplicable because a real estate tax was at issue. “A tax on real estate, like any other tax, may impermissibly burden interstate commerce.”<sup>220</sup> Moreover, “[t]o allow a State to avoid the strictures of the dormant Commerce Clause by the simple device of labeling its discriminatory tax a levy on real estate would destroy the barrier against protectionism that the Constitution provides.”<sup>221</sup> In short, “if ‘it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze.’”<sup>222</sup> Under such circumstances (as in *Camp Newfound*), the Commerce Clause applies, and a tax must satisfy the Clause’s substantive criteria in order to pass constitutional muster.

### 3. The “Interstate” Privileges and Immunities Clause

The Privileges and Immunities Clause of Article IV of the Constitution (the so-called “interstate” Privileges and Immunities Clause)<sup>223</sup> provides that “[t]he Citizens of

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<sup>216</sup> 379 U.S. 241 (1964).

<sup>217</sup> *Camps Newfound*, 520 U.S. at 573.

<sup>218</sup> *Id.* at 574.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 575.

<sup>222</sup> *Id.* at 573 (citations omitted).

<sup>223</sup> The Fourteenth Amendment to the Constitution also contains a Privileges and Immunities Clause, which provides, “No State shall make or enforce any law which shall abridge the privileges or immunities of

each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”<sup>224</sup> “Beyond doubt,” as the Supreme Court declared long ago in the leading case of *Ward v. Maryland*,<sup>225</sup>

those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens.<sup>226</sup>

The Court in *Ward* invalidated a vendors’ license tax imposed on nonresidents selling out-of-state goods in the taxing state because the tax rates were higher than those imposed by the comparable levy applicable to resident vendors. The Court has also relied on the Privileges and Immunities Clause in striking down the imposition of a higher income tax on out-of-state construction firms than on in-state firms,<sup>227</sup> a license fee for shrimp boats owned by nonresidents amounting to 100 times the license fee for shrimp boats owned by residents,<sup>228</sup> and a fee for nonresident commercial fishermen amounting to ten times the fee imposed on resident fishermen.<sup>229</sup>

In *Toomer v. Witsell*,<sup>230</sup> the case that struck down the discriminatory license fee for shrimp boats owned by nonresidents, the Court articulated the basic purposes underlying the Privileges and Immunities Clause as well as the criteria of constitutional adjudication under the clause:

The primary purpose of this clause ... was to help fuse into one Nation a collection of independent sovereign States. It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy ... .

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citizens of the United States.” U.S. CONST. amend. XIV, § 1. We discuss this clause *infra* notes 260-64 and accompanying text.

<sup>224</sup> U.S. CONST. art. IV, § 2.

<sup>225</sup> 79 U.S. (12 Wall.) 418 (1870).

<sup>226</sup> *Id.* at 430.

<sup>227</sup> *Chalker v. Birmingham*, 249 U.S. 522 (1919).

<sup>228</sup> *Toomer v. Witsell*, 334 U.S. 385 (1948).

<sup>229</sup> *Mullaney v. Anderson*, 342 U.S. 415 (1952).

<sup>230</sup> 334 U.S. 385. (1948).

In line with this underlying purpose, it was long ago decided that one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State.

Like many other constitutional provisions, the privileges and immunities clause is not absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures.<sup>231</sup>

The Privileges and Immunities Clause provides that “[t]he *Citizens* of each State shall be entitled to all of the Privileges and Immunities of *Citizens* in the several States.”<sup>232</sup> It does not say that “the *residents* of each State shall be entitled to all of the Privileges and Immunities of *residents* in the several States.” Nevertheless, the U.S. Supreme Court has declared that “a general taxing scheme ... if it discriminates against all nonresidents has the necessary effect of including in the discrimination those who are citizens of other States.”<sup>233</sup> Accordingly, the Privileges and Immunities Clause protects nonresidents against the discrimination that the clause forbids.<sup>234</sup>

The Privileges and Immunities Clause embraces only “fundamental” rights. The U.S. Supreme Court has declared that “[o]nly with respect to those ‘privileges and immunities’ bearing upon the vitality of the Nation as a single entity must the state treat all citizens, resident and non-resident, equally.”<sup>235</sup> The Court therefore upheld an elk-hunting license scheme that imposed substantially higher fees on nonresidents than on residents because access by nonresidents to recreational big game hunting in Montana did not fall within the category of rights protected by the Privileges and Immunities Clause.

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<sup>231</sup> *Id.* at 395-96.

<sup>232</sup> U.S. CONST. art. IV, 2 (emphasis supplied).

<sup>233</sup> *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 79 (1920).

<sup>234</sup> Although not of particular significance to this report, the U.S. Supreme Court has made it clear that the Privileges and Immunities Clause, while generally protecting nonresidents, does not protect nonresident corporations because they are not “citizens” within the meaning of the clause and, thus, cannot invoke the clause’s protection. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1868); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 586 (1839). In this respect, the Privileges and Immunities Clause should be contrasted with the Due Process and Equal Protection Clauses, which protect all “person[s]” including corporate persons.

<sup>235</sup> *Baldwin v. Montana Fish & Game Comm’n*, 436 U.S. 371, 383 (1978).

#### 4. Due Process Clause

The Supreme Court has construed the Due Process Clause of the Fourteenth Amendment<sup>236</sup> to limit the territorial reach of the states' taxing powers. With respect to state taxation of cross-border economic activity, the general restraint has been applied in essentially two situations. First, when a state seeks to tax an out-of-state taxpayer whose connections with the state are insubstantial, the Due Process Clause has been invoked to forbid the exercise of state tax power on the ground that the state lacks a sufficient nexus with the taxpayer. As the Court declared in a phrase it has frequently repeated: "[D]ue process requires some definite link, some minimum connection between a state and the person, property, or transaction it seeks to tax."<sup>237</sup> Second, even if a taxpayer has sufficient nexus with the state to subject the taxpayer to the state's taxing jurisdiction, the Due Process Clause requires that the measure of the tax fairly reflect the taxpayer's activities in the state. Thus, the Court has construed the Due Process Clause as requiring that the states, in taxing the property or income of an interstate enterprise, include within the tax base only that portion of the taxpayer's property or income that is fairly apportioned to the taxpayer's activities in the state.<sup>238</sup> Neither of these limitations appears to have any bearing on the issues addressed in this report and we do not consider them further.

The Due Process Clause is relevant to this report, however, insofar as it requires that taxpayers who have been subjected to an unconstitutionally discriminatory tax receive "meaningful backward-looking relief."<sup>239</sup> In other words, if a court were to find that any provision of Florida's ad valorem property tax regime applicable to homestead property was invalid on federal constitutional grounds, then due process restraints would be relevant to whatever remedy the affected tax jurisdictions may seek to provide aggrieved homestead owners. We discuss these issues in Part V of this report.

#### 5. Right to Travel

The U.S. Supreme Court's decisions have established a constitutional "right to travel" from one state to another, and the Court has prohibited states from unduly burdening that right.<sup>240</sup> However, the precise constitutional source of that right is unclear, because the Court has relied on several provisions of the Constitution in delineating it,

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<sup>236</sup> U.S. CONST. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty or property without due process of law").

<sup>237</sup> *Miller Bros. v. Maryland*, 347 U.S. 340, 344-45 (1954).

<sup>238</sup> *E.g., Union Tank Line Co. v. Wright*, 249 U.S. 275, 281-83 (1919).

<sup>239</sup> *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 31 (1990).

<sup>240</sup> *See, e.g., Saenz v. Roe*, 526 U.S. 489 (1999); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

and the scope of the right itself is less than certain. In this subpart, we describe the contours of the right to travel as articulated by the Court, focusing on those aspects of its doctrine that are particularly relevant to potential constitutional challenges to homestead property tax limitations and exemptions.

The most relevant decisions bearing on the right to travel are those that establish restraints on the states' power to treat newly arrived residents less favorably than those who have been residents of the state for a longer time.<sup>241</sup> These durational residency requirements may impair the right to travel in two ways. First, when the government requires an individual to be in the state for a period of time before receiving some governmental benefit, the law might deter migration into the state.<sup>242</sup> Second, a durational residency requirement can burden the right to travel by distributing governmental benefits based on the length of residency.<sup>243</sup> Although these two types of cases involve related issues, they are conceptually distinct. The first type of case involves state laws refusing to recognize a newly arrived person as a resident entitled to receive benefits available to residents<sup>244</sup> whereas the second type of case recognizes the newly arrived person as a resident, but conditions the benefit on the length of the residence.

It is important to note that the Supreme Court has never held that a state or local government is prohibited from requiring persons to be residents of that jurisdiction in order to receive government benefits.<sup>245</sup> Thus the Court has declared that “[a] bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed

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<sup>241</sup> See, e.g., *Zobel v. Williams*, 457 U.S. 55 (1982) (invalidating state statute that distributed state money to residents based upon the length of their residence in the state). Other right to travel and related cases focus on state laws that burden the actual interstate movement of persons from state to state, see, e.g., *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867) (invalidating statute imposed tax on railroads for every passenger carried out of the state and recognizing inherent right to travel); *Edwards v. California*, 314 U.S. 160 (1941) (invalidating under Commerce Clause statute that penalized the bringing into the state of nonresidents known to be indigent, with four Justices recognizing inherent constitutional right of travel).

<sup>242</sup> See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969) (invalidating one-year residency requirement for eligibility to receive welfare benefits).

<sup>243</sup> See, e.g., *Zobel v. Williams*, 457 U.S. 55 (1982) (invalidating state statute that distributed state money to residents based upon the length of their residence in the state).

<sup>244</sup> There is an obvious overlap with cases involving discrimination against nonresidents under the “interstate” Privileges and Immunities Clause, see *supra* notes 223-35 and accompanying text, but again there is a conceptual distinction between these two classes of cases. A law discriminating against nonresidents can be justified under the standards delineated above and, under those standards, it is clear that a state is not required to provide governmental benefits to nonresidents. See *infra* note 245. It is a different question whether a state may deny a person who has been physically present in the state for an extended period of time the status of a resident entitled to receive such benefits.

<sup>245</sup> See JOHN NOWAK & RONALD ROTUNDA, CONSTITUTIONAL LAW § 14.38, p. 1070 (7th ed. 2004) (“The Supreme Court has never held that a state or local government is prohibited from requiring persons to be residents of that locality to receive government benefits.”).

only by residents.”<sup>246</sup> Accordingly, while states may confine such benefits as welfare, voting, and education to their residents,<sup>247</sup> it must draw the line – at least with respect to “fundamental rights”<sup>248</sup> – between *bona fide* residents and nonresidents, not between new and old residents. It may come as no surprise that this line is far from clear.<sup>249</sup>

The first type of case identified above, where a state conditions government benefits on a residency requirement that exceeds reasonable bounds, is illustrated by *Shapiro v. Thompson*.<sup>250</sup> In that case, the Court reviewed the constitutionality of state statutes that denied welfare benefits to persons who had not resided within the state for at least one year. The Court held that the statutes violated the Equal Protection Clause of the Fourteenth Amendment, because the one-year residency requirement deterred the entry of indigent persons into the state, thereby limiting their right of interstate travel. Because this right was “fundamental,” the classification (of qualifying and nonqualifying “residents” based on a one-year standard) could not survive scrutiny unless it was “shown to be necessary to promote a *compelling* governmental interest.”<sup>251</sup> The Court found that the states’ purpose of dissuading indigents of migrating to the state solely to receive increased welfare benefits did not suffice to overcome the impermissible distinction between new and old residents that burdened fundamental rights. Moreover, the Court made it clear that state efforts to deal with legitimate concerns created by in-migration of potential welfare recipients could not be implemented by discriminatory classifications if “less drastic means are available.”<sup>252</sup>

The Court has followed *Shapiro* in a series of cases dealing with durational residency requirements. Most of these cases involve statutes that required persons to

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<sup>246</sup> *Martinez v. Bynum*, 461 U.S. 321, 328 (1983).

<sup>247</sup> See, e.g., *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976) (public employment); *Rosario v. Rockefeller*, 410 U.S. 752 (1973) (voting); *Starns v. Malkerson*, 401 U.S. 985 (1971) *aff’g* 326 F. Supp. 234 (D. Minn. 1970) (education).

<sup>248</sup> See *supra* note 235 and accompanying text (observing that protection of interstate Privileges and Immunities Clause is limited to “fundamental” rights). In some respects, then, the right to travel, however defined, is broader than the rights guaranteed to nonresidents under the interstate Privileges and Immunities Clause because it embraces even limitations on the opportunity to enjoy nonfundamental rights, which lie outside the scope of the interstate Privileges and Immunities Clause but whose denial may nevertheless impose a burden on the right to travel.

<sup>249</sup> Compare, e.g., *Vlandis v. Kline*, 412 U.S. 441 (1973) (invalidating state statute barring nonresident student from becoming in-state student for purposes of lower in-state tuition rates) with *Starns v. Malkerson*, 401 U.S. 985 (1971) *aff’g* 326 F. Supp. 234 (D. Minn. 1970) (sustaining one-year residency requirement to qualify for lower in-state tuition).

<sup>250</sup> 394 U.S. 618 (1969).

<sup>251</sup> *Id.* at 634 (emphasis in original).

<sup>252</sup> *Id.* at 637.

maintain a residency status for a set duration of time before achieving eligibility for some governmental benefit or the opportunity to exercise some right. In *Dunn v. Blumstein*,<sup>253</sup> for example, the Court struck down a state law that required a voter to be a resident of the state for more than a year (and the county for more than three months) before he could vote. Because there was no dispute that the person was a resident, the state could not deny the individual the vote merely because he had not been present in the state for the specified duration of time. Other cases, however, have sustained shorter voting residency requirements.<sup>254</sup>

Although the right in these cases is often fundamental (e.g., the right to vote), it need not be, because the durational residency requirement burdens the right to travel which is itself a fundamental right. Thus in *Memorial Hospital v. Maricopa County*,<sup>255</sup> the Court held that a one-year county residency requirement as a condition to receiving nonemergency hospitalization at public expense violated the right to travel.<sup>256</sup> Hence any classification that burdens the right to a governmental benefit (whether or not fundamental) implicates constitutional right to travel strictures, although the existence of a fundamental right may influence the level of scrutiny a court applies to the state's justification for denying the benefit (e.g., "compelling state interest" versus "rational basis").

The second type of suspect durational residency requirement identified above – those that provide greater benefits to long-term residents than to short-term residents – is illustrated by *Zobel v. Williams*.<sup>257</sup> In *Zobel*, the Court invalidated a statute that distributed state money to residents based upon their length of residence in the state. Under the statute, each citizen over age 18 received a "dividend unit" equal to \$50 for each year he or she had been a state resident after 1959. The Court declined to specify the appropriate standard of review for right to travel cases, but invalidated the statute because it failed to pass even "rational basis" scrutiny. The Court has also invalidated state statutes under a "rational basis" equal protection analysis when they conditioned the availability of state benefits on having acquired residency before a specified date<sup>258</sup> or before a certain event occurred.<sup>259</sup>

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<sup>253</sup> 405 U.S. 330 (1972).

<sup>254</sup> *Marston v. Lewis*, 410 U.S. 679 (1973); *Burns v. Fortson*, 410 U.S. 686 (1973).

<sup>255</sup> 415 U.S. 250 (1974).

<sup>256</sup> The Court found it irrelevant that the classification burdened intrastate as well as interstate travel. This fact could not insulate the discrimination against interstate travel any more than discrimination against interstate commerce may be defended on the ground that a law also discriminated against some forms of intrastate commerce. See HELLERSTEIN & HELLERSTEIN, *supra* note 141, at ¶ 4.13[1A] (discussing scope or "completeness" of discrimination).

<sup>257</sup> 457 U.S. 55 (1982).

<sup>258</sup> *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) (invalidating limitation of property tax exemption to Vietnam veterans who had become residents of state prior to May 8, 1976). See also *Attorney*

In the Court's most recent right to travel case, *Saenz v. Roe*,<sup>260</sup> the Court relied on the Privileges and Immunities Clause of the Fourteenth Amendment<sup>261</sup> in striking down laws that accorded a preference to long-time residents over newly arrived residents with respect to the dispensation of welfare benefits. California, a state with relatively generous welfare benefits, limited the benefits for the first year a person or family resided in the state to those they would have received in their previous state of residence. In striking down the limitation, the Court held that the Fourteenth Amendment's Privileges and Immunities Clause guaranteed newly arrived citizens the same rights as long-time citizens of the state and suggested that the "appropriate standard" for this type of case may be "more categorical" than the compelling interest test used in some equal protection right to travel cases "but it is surely no less strict."<sup>262</sup>

The Court in *Saenz* observed that it had based its earlier right to travel decisions on various constitutional provisions, and, in resting its instant decision on an arguably "dormant"<sup>263</sup> provision, the Court attempted to clarify (or, perhaps, recast) its earlier decisions in a manner that will no doubt influence analysis of any constitutional attack on the Save Our Homes portability provisions should they become law. The Court described its right to travel cases as follows:

The "right to travel" discussed in our cases embraces at least three different components. It protects the right of a citizen of one State to enter and to

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*General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (invalidating state constitutional and statutory provisions according civil service employment preference to veterans who had lived in state when they entered military service).

<sup>259</sup> *Williams v. Vermont*, 472 U.S. 14 (1985) (invalidating credit against state use tax for other states' sales taxes to persons who were residents at the time they made the out-of-state purchase).

<sup>260</sup> 526 U.S. 489 (1999).

<sup>261</sup> In contrast to the "interstate" Privileges and Immunities Clause of Article IV, discussed *supra* notes 223-35 and accompanying text, the Privileges and Immunities Clause of the Fourteenth Amendment ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," U.S. CONST. amend. XIV, § 1) had for many years been considered inconsequential. Five years after the adoption of the Fourteenth Amendment, the Supreme Court held that this provision created no new rights of national citizenship, but merely furnished an additional guarantee of rights that citizens of the United States already possessed. *The Slaughter House Cases*, 83 US (16 Wall.) 36 (1873). Consequently, the clause served no independent role as a restraint on state tax powers. See *Madden v. Kentucky*, 309 U.S. 83 (1940), overruling *Colgate v. Harvey*, 296 U.S. 404 (1935). See Note, *Privileges and Immunities of Citizens of the United States—Colgate v. Harvey Overruled*, 9 GEO. WASH. L. REV. 106 (1940). As Chief Justice Rehnquist observed in his dissent in *Saenz*, the case "breathes new life into the previously dormant Privileges and Immunities Clause of the Fourteenth Amendment." *Id.* at 511 (1999) (Rehnquist, C.J., dissenting).

<sup>262</sup> *Saenz*, 526 U.S. at 504.

<sup>263</sup> *Id.*

leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.<sup>264</sup>

## **V. FEDERAL CONSTITUTIONAL CONSTRAINTS ON STATE AND LOCAL AD VALOREM PROPERTY TAXATION: APPLICABILITY TO PROPOSED AMENDMENTS TO FLORIDA CONSTITUTION**

In the final Part of this report, we first describe the proposals for change to the state constitutional provisions bearing on ad valorem taxation of homestead property. We then proceed to analyze the federal constitutional issues raised by those proposed changes (as well as any implications this analysis may have for the existing state law limitations on homestead property taxation). Finally, we discuss remedial issues (both state and federal) that would be raised if any of the provisions under consideration were held to be unconstitutional on federal grounds.

### **A. The Proposed Amendments to Florida's Constitution**

During the 2005 and 2006 sessions of the Florida Legislature, numerous proposals were filed to make changes to the Save Our Homes assessment limitation and to the homestead exemption. The proposed changes generally take one of the following five forms,<sup>265</sup> although there are variations to each of the basic proposals: (1) portability of the Save Our Homes differential; (2) modification of the existing Save Our Homes provision; (3) increase in the current homestead exemption; (4) extension of assessment limitations to non-homestead property; (5) elimination of the Save Our Homes provision.

#### **1. Portability of the Save Our Homes Differential**

The common theme underlying the portability proposals is that homestead owners may retain the right to the reduced assessment they are enjoying on their existing homestead property and may carry it with them to new homestead property that they acquire. Generally, the amount being “ported” is equivalent to the differential between just value and assessed value (under Save Our Homes) from the prior homestead. That dollar value is then subtracted from the new homestead’s just value to determine the new assessed value. Most of the proposals require that the new property’s assessed value after the calculation be at least equal to the previous homestead’s assessed value at the time of sale. Further, most of the proposals contemplate that the differential can be “ported” anywhere in the state (i.e. across taxing counties’ geographic boundaries).

The variations on the basic portability proposals are as follows:

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<sup>264</sup> *Id.* at 500.

<sup>265</sup> Our description of these proposals is based on a summary provided to us by the Office of Economic and Demographic Research of the Florida Legislature.

- a. **Available Only Within Qualifying Counties**
    - i. **Local option: Referendum or Majority Vote of Governing Body**
  - b. **Capped Amount (Income-Based).**
  - c. **Capped Amount**
    - i. **Dollar Ceiling**
    - ii. **Specified Percentage of the Prior Differential**
  - d. **Age-Limited (Senior Citizens).**
  - e. **Directional Limit (Upsize or Downsize Only).**
  - f. **One-Time Availability.**
  - g. **Alternative Definitions of Portability**
    - i. **Dollar Value of Sales Price Less Prior Homestead's Assessed Value Subtracted From Purchase Price of New Home to Determine New Assessment Level**
2. **Modification of the Existing Save Our Homes Provision**

Most of these have been proposed in conjunction with some form of portability or other homestead exemption change. The variations on these modifications are as follows:

- a. **Limit the Differential to a Certain Dollar Value or Percentage of Just Value**
- b. **Limit the Duration of the Assessment Limitation.**
- c. **Treat Various Classes of Homeowners Differently**
  - i. *E.g., First-time Homeowners Receive Additional Breaks*
- d. **Freeze Homestead Assessments After a Specified Period of Time**
  - i. **All Homeowners**
  - ii. **Certain Classes of Homeowners (Based on Age, Income, etc.)**

### **3. Increase in the Current Homestead Exemption**

This can be in conjunction with portability. Some variants index the exemption so that it automatically grows.

### **4. Extension of Assessment Limitations to Non-homestead Properties (Commercial, Non-homestead Residential, etc.)**

Some proposals replace Save Our Homes with an assessment limit (usually in the form of a growth rate) that is applied to all properties. Others retain the Save Our Homes provision, but make it available to all properties. A variation has assessment limitations for all properties, but differing rates between homesteads and all other properties.

### **5. Elimination of Save Our Homes (Effect on Current Beneficiaries)**

This assumes that existing beneficiaries are not “grandfathered” during a total replacement by some other mechanism such as an income-based circuit breaker. Variations have a grandfather provision.

## **B. Potential Constitutional Challenges to the Portability Proposals**

Of the five types of proposed changes to Florida’s regime for ad valorem taxation of homestead property described in Part V (A) above, the Save Our Homes portability proposals clearly raise the most serious constitutional questions, and most of the ensuing discussion is addressed to these proposals. Nevertheless, much of this discussion has implications (both negative and positive) for other proposed changes to Florida’s taxation of homestead property described above as well as for the existing treatment of homestead property. In order to avoid needless duplication of our legal analysis of each of these provisions, we first undertake a systematic analysis of the potential constitutional challenges to the basic portability proposals. We then consider the variations on these proposals as well as the other proposals described above, identifying the constitutional significance (if any) of the distinctions among the proposals, but, where no material distinctions exist, we rely on the initial analysis (with appropriate cross-references) for our conclusions.

### **1. Equal Protection Objections**

Apart from equal protection objections relating to the right to travel (insofar as the Court invoked the Equal Protection Clause to bar states from discriminating against newly arrived residents),<sup>266</sup> which we consider below,<sup>267</sup> there do not appear to be serious

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<sup>266</sup> See, e.g., *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) (invalidating under Equal Protection Clause limitation of property tax exemption to Vietnam veterans who had become residents of state prior to May 8, 1976).

<sup>267</sup> See *infra* notes 364-84 and accompanying text.

equal protection objections to the basic portability proposals relating to the Save Our Homes assessment limitation. If, as in *Nordlinger*, the only question is “whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest,”<sup>268</sup> it is plain that it does. To be sure, the two rational bases that the Court identified in *Nordlinger* – the state’s legitimate interest in “local neighborhood preservation”<sup>269</sup> and its interest in protecting the “reliance interest” of “existing owners”<sup>270</sup> – may not apply to the portability provisions, because those enjoying the benefit of portability are likely to be leaving their local neighborhood and arguably can no longer be characterized as “existing owners” whose “reliance interest” warrants protection. Nevertheless, there are ample rational bases that could be advanced for the portability provisions, including the facilitation of sales in the residential home market; the resulting economic development of such market; and the protection of the reliance interest of Florida homeowners from the tax increases associated with soaring real estate prices. These appear to satisfy the loose rational-basis standard that the Court articulated in *Nordlinger* and repeated in *Fitzgerald*,<sup>271</sup> namely that

the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.<sup>272</sup>

For these reasons, it might also be observed, the existing Save Our Homes amendment without any portability provision plainly satisfies federal equal protection standards apart from those associated with the interstate right to travel.

## **2. Commerce Clause Objections**

### **a. The Applicability of the Commerce Clause**

As indicated in the discussion in Part IV of this report,<sup>273</sup> the threshold question in every Commerce Clause challenge to a state tax is whether the tax that is attacked as violating substantive Commerce Clause criteria even triggers Commerce Clause scrutiny, *i.e.*, whether the challenged tax involves purely “local” commerce rather than

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<sup>268</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992).

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Fitzgerald v. Racing Association of Central Iowa*, 539 U.S. 103, 107 (2003), discussed *supra* notes 168-72 and accompanying text.

<sup>272</sup> *Id.* (quoting *Nordlinger*, 505 U.S. 1, 11-12 (1992) (citations omitted)).

<sup>273</sup> See *supra* notes 201-22 and accompanying text.

“Commerce . . . among the several States . . .”<sup>274</sup> It is apparent that this threshold question may be relevant to any Commerce Clause challenge to the portability proposals relating to Florida’s Save Our Homes provisions, because one may contend that property taxes are inherently “local” and rules relating to such taxes therefore are not subject to scrutiny under *Complete Auto*’s four-part test. Indeed, support for this position can be found in the one pre-*Nordlinger* case that addressed a Commerce Clause challenge to the constitutionality of Proposition 13. In *R.H. Macy & Co. v. Contra Costa County*,<sup>275</sup> the California Court of Appeal rejected the Commerce Clause challenge, declaring:

Article XIII A does not restrict interstate commerce because it taxes only real property within the state. It is widely recognized that . . . “A tax on property or upon a taxable event in the state, apart from operation, does not interfere with [interstate commerce].”<sup>276</sup>

Although the U.S. Supreme Court actually granted certiorari in *R.H. Macy*, it subsequently dismissed the case after the taxpayer withdrew its petition,<sup>277</sup> and *Nordlinger* did not raise a Commerce Clause claim in her constitutional challenge to Proposition 13.<sup>278</sup>

Despite *R.H. Macy* and the lack of definitive U.S. Supreme Court guidance on whether Proposition 13 is subject to dormant Commerce Clause scrutiny, if the question were properly presented we believe that the Court would hold that Proposition 13 is indeed subject to such scrutiny and that it would likewise find that a Commerce Clause challenge to the Save Our Homes portability proposals must be evaluated under *Complete Auto*’s four-prong test. First, it is plain that the *R.H. Macy* court’s rationale – that Proposition 13 is immune from Commerce Clause scrutiny because “it taxes only real property within the state”<sup>279</sup> – has been wholly discredited by the U.S. Supreme Court’s

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<sup>274</sup> U.S. CONST. art I, § 8, cl. 3.

<sup>275</sup> 276 Cal. Rptr. 530 (Ct. App. 1990), *rev. denied*, (Cal. Sup. Ct., 1991), *cert. granted*, 500 U.S. 951 (1991), *cert. dismissed*, 501 U.S. 1245 (1991).

<sup>276</sup> *R.H. Macy*, 276 Cal. Rptr. at 541.

<sup>277</sup> The taxpayer withdrew its petition over concerns that California homeowners – the taxpayer’s customers and potential customers – would blame Macy’s for their higher assessments if it prevailed. Eugene Corrigan, *Macy’s Withdraws Appeal of California’s Proposition 13*, State Tax Today, June 11, 1991, Doc. STN 118, Tax Analysts Electronic Data Base, available at <http://services.taxanalysts.com/taxbase/archive/stn1991.nsf>. This may explain the absence of any subsequent challenge to Proposition 13 by business taxpayers on Commerce Clause grounds.

<sup>278</sup> As noted above, *Nordlinger* challenged Proposition 13 on equal protection and right to travel grounds, and the Court rejected the first challenge and found she had no standing to raise the second. See *supra* notes 183-84 and accompanying text.

<sup>279</sup> *R.H. Macy*, 276 Cal. Rptr. at 541 (quoting *Southern Pacific Co. v. Gallagher*, 306 U.S. 167, 178 (1939) (brackets in original)). The court also found that the taxpayers had failed to show that Proposition 13 imposed a burden on interstate commerce and that, in any event, the Commerce Clause argument was

decision in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*.<sup>280</sup> As we observed in our earlier discussion of the case, the Court rejected the taxing authority's claims that the dormant Commerce Clause was inapplicable because a real estate tax was at issue. "A tax on real estate, like any other tax, may impermissibly burden interstate commerce."<sup>281</sup> Moreover, "[t]o allow a State to avoid the strictures of the dormant Commerce Clause by the simple device of labeling its discriminatory tax a levy on real estate would destroy the barrier against protectionism that the Constitution provides."<sup>282</sup> In short, it is no defense to a Commerce Clause attack on Proposition 13 or on the Save Our Homes portability provisions to observe that it involves real property tax assessments.

Second, a strong case can be made that Proposition 13 and the proposed Save Our Homes portability provisions "substantially affect interstate commerce, and this effect is within the proper focus of Commerce Clause inquiry."<sup>283</sup> With respect to Proposition 13, which applies to commercial as well as residential property, it is hard to maintain that a built-in competitive advantage for established businesses that pay lower property taxes than their newly arrived competitors from other states does not "substantially affect" interstate commerce, whether or not it ultimately amounts to a Commerce Clause violation under substantive Commerce Clause criteria.

One may seek to distinguish the Save Our Homes portability provisions from Proposition 13 for purposes of the foregoing analysis on the ground that the former involve only homestead property and therefore lack the "commercial" character necessary to trigger Commerce Clause scrutiny. We believe any such effort would fail, however, because any suggestion that the residential "homestead" market does not involve interstate commerce ignores "economic realities,"<sup>284</sup> one of the touchstones of the Court's contemporary Commerce Clause jurisprudence. The economic reality of the residential homestead market is that it is associated with enormous interstate flows of capital and labor that are likely to be substantially affected by the Save Our Homes portability provisions. By increasing the relative tax burden on property acquired by newly arriving residents,<sup>285</sup> the Save Our Homes

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simply a "restatement" of their right to travel argument, which the court had dismissed. *Id.* We address these substantive Commerce Clause issues below.

<sup>280</sup> 520 U.S. 564 (1997), discussed *supra* notes 213-22 and accompanying text.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.* at 575.

<sup>283</sup> *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 616 (1981).

<sup>284</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

<sup>285</sup> If the Save Our Homes assessment benefit is portable, then an existing Florida homestead owner purchasing a new Florida homestead will pay less taxes than he or she would have paid in the absence of the portability provision and new Florida homesteaders (newly arrived Florida residents and first-time Florida resident buyers) will pay more taxes, assuming a predetermined tax revenue requirement.

portability provisions are likely to discourage flows of capital into Florida by increasing the cost of acquiring homestead property there. Indeed, the U.S. Supreme Court recognized this point in holding the Sherman Act applicable to the price-fixing activities of real estate brokers.<sup>286</sup> As the Court observed:

[A]n appreciable amount of commerce is involved in the financing of residential property ... and in the insuring of titles to such property.... The testimony further demonstrates that *this appreciable commercial activity has occurred in interstate commerce*. Funds were raised from out-of-state investors and from interbank loans obtained from interstate financial institutions. Multistate lending institutions took mortgages insured under federal programs which entailed interstate transfers of premiums and settlements. Mortgage obligations physically and constructively were traded as financial instruments in the interstate secondary mortgage market. Before making a mortgage loan ..., lending institutions usually, if not always, required title insurance, which was furnished by interstate corporations. ...<sup>287</sup>

Because “the definition of ‘commerce’ is the same when relied on to strike down or restrict state legislation as when relied on to support some exertion of federal control or regulation,”<sup>288</sup> the Court’s decision in *McLain* provides powerful support for the view that the Save Our Homes portability provisions should be scrutinized under the Commerce Clause.

This conclusion is reinforced by the fact that the Save Our Homes portability provisions are likely to have a substantial effect on interstate flows of labor as well as interstate flows of capital. The *McLain* Court recognized this point as well, observing that “it may be possible for petitioners to establish that ... an appreciable amount of interstate commerce is involved with the local residential real estate market arising out of the interstate movement of people ...”<sup>289</sup> It is also a point that one of the co-authors of this report made in a related context, namely, that “limiting the tax advantages associated with interstate principal residence replacements could certainly have a dampening effect on both interstate labor mobility and the secondary mortgage market and hence the national common market.”<sup>290</sup> One may also contend that the Save Our Homes portability provisions thereby discourage the transportation of persons across state lines in violation

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<sup>286</sup> *McLain v. Real Estate Board*, 444 U.S. 232 (1980).

<sup>287</sup> *Id.* at 245.

<sup>288</sup> *Hughes v. Oklahoma*, 441 U.S. 322, 326 n.2 (1979).

<sup>289</sup> *McLain*, 444 U.S. at 245.

<sup>290</sup> James C. Smith & Walter Hellerstein, *State Taxation of Federally Deferred Income: The Interstate Dimension*, 44 TAX L. REV. 349, 395 n. 180 (1989).

of established Commerce Clause restraints<sup>291</sup> or that they discourage out-of-state businesses from locating in the state, due to higher relocation costs associated with increased property taxes for newly arrived acquirers of homestead property.

One might raise the question whether the foregoing analysis would likewise apply to any Commerce Clause challenge to the existing Save Our Homes assessment limitation even without portability. Without prejudging the merits of any such challenge (which we address briefly below in connection with our discussion of substantive Commerce Clause principles<sup>292</sup>), we believe that the question would be close. On the one hand, the argument could be made that the existing Save Our Homes assessment limitation increases the relative tax burden on property acquired by newly arriving residents<sup>293</sup> and therefore discourages the movement of capital and labor across state lines for the reasons suggested above. On the other hand, the burden that the existing Save Our Homes assessment limitation imposes on interstate capital and labor flows is considerably more attenuated than the burden under a portable assessment limitation because all new homestead owners (whether from within or without the state) will share the increased property burden necessary to offset the reduced property burden borne by long-term homestead owners. There would therefore be a stronger argument that such an attenuated burden did not “substantially affect” interstate commerce and that the assessment limitation was not subject to Commerce Clause scrutiny.

#### **b. Application of Substantive Commerce Clause Principles**

Of the four criteria that *Complete Auto* articulated for adjudicating the validity of a state tax under the Commerce Clause – substantial nexus, fair apportionment, nondiscrimination, and fair relation between a tax and services provided by the state<sup>294</sup> – only the last two have any bearing on the property taxation of homesteads.<sup>295</sup>

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<sup>291</sup> *Edwards v. California*, 314 U.S. 160 (1941); see also *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564, 573 (1997) (“[t]he attendance of these campers necessarily generates the transportation of persons across state lines that has long been recognized as a form of ‘commerce’”).

<sup>292</sup> See *infra* notes 383-84 and accompanying text.

<sup>293</sup> In the absence of the Save Our Homes assessment limitation, all property would contribute to the public fisc on the basis of its just value. With the Save Our Homes assessment limitation, however, homestead property owned by long-term owners contributes relatively less to the public fisc and homestead property owned by new owners (including those arriving from other states) contributes relatively more to the public fisc than if all property were assessed at just value.

<sup>294</sup> See *supra* notes 195-96 and accompanying text.

<sup>295</sup> A homestead property will always have substantial nexus with a state and the tax will always be fairly apportioned, in the sense that the tax will always be limited to intrastate values.

## i. Discrimination

The prohibition against state taxes that discriminate against interstate commerce has been a fundamental tenet of the Court's dormant Commerce Clause jurisprudence from the very beginning.<sup>296</sup> Although the concept of discrimination is not self-defining and the scope of the doctrine forbidding discriminatory taxes has never been precisely delineated by the Court, the central meaning of discrimination as a criterion for adjudicating the constitutionality of state taxes on interstate business emerges unmistakably from the Court's numerous decisions addressing the issue: a tax that by its terms or operation imposes greater burdens on out-of-state goods, activities, or enterprises than on competing in-state goods, activities, or enterprises will be struck down as discriminatory under the Commerce Clause.<sup>297</sup> Moreover, the Court has invalidated discriminatory levies whether or not the discrimination is intentional.<sup>298</sup> While the Court has occasionally sanctioned different treatment of interstate and local business,<sup>299</sup> its decisions strongly adhere to the principle that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.'"<sup>300</sup>

The first objection to any claim of Commerce Clause discrimination allegedly created by the Save Our Homes portability provisions would be that they affect all homestead purchasers who are not previous Florida homestead owners alike, whether they come from Florida or are newly arrived from other states. We believe that the response to this objection is the response the U.S. Supreme Court has given in analogous contexts when a state regulation or tax favors certain in-state residents or interests while discriminating against many other in-state as well as out-of-state residents, namely, that the discrimination is still unconstitutional. In the leading case of *Dean Milk Co. v. City of Madison*,<sup>301</sup> the

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<sup>296</sup> See *Welton v. Missouri*, 91 U.S. 275 (1876). In *Welton*, the first case in which the Court invalidated a discriminatory tax under the Commerce Clause, the Court struck down a peddlers' license tax imposed only upon dealers in out-of-state goods, as applied to an out-of-state merchant, on the grounds that it discriminated against interstate commerce and was contrary to Congress' will "that interstate commerce shall be free and untrammelled." *Id.* at 282.

<sup>297</sup> See, e.g., *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984) (invalidating excise tax on liquor from which locally-produced beverages were exempt); *Westinghouse Elect. Corp. v. Tully*, 466 U.S. 388 (1984) (invalidating income tax credit limited to corporations engaging in export-related activity in the state); *Fulton Corp. v. Faulkner*, 516 U.S. 325 (1996) (invalidating state intangible property tax that favored investment in in-state over out-of-state corporations).

<sup>298</sup> See, e.g., *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963).

<sup>299</sup> See, e.g., *General Motors Corp. v. Tracy*, 519 U.S. 278 (1997) (sustaining use tax exemption applicable only to purchases of natural gas from local distribution companies).

<sup>300</sup> *Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318, 329 (1977) (quoting *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 457-58 (1959)).

<sup>301</sup> 340 U.S. 349 (1951).

Court struck down a Madison, Wisconsin ordinance barring the sale of milk not processed within five miles of the city. The Court found it “immaterial”<sup>302</sup> that the ordinance discriminated equally against in-state milk processed outside the five-mile perimeter.<sup>303</sup> The Court’s position is consistent with its more recent pronouncements that there is no “de minimis” defense to discrimination<sup>304</sup> and that “[w]e need not know how unequal the Tax is before concluding that it unconstitutionally discriminates.”<sup>305</sup> Indeed, the many local levies that courts routinely strike down when they favor local over non-local residents necessarily assume that the discrimination against in-state but non-local interests is insufficient to “cure” the discrimination against interstate commerce.<sup>306</sup>

The more difficult Commerce Clause question, in our judgment, is whether the alleged burden that the Save Our Homes portability provisions impose on interstate capital flows and labor mobility amount to discrimination within the meaning of the Commerce Clause. There is plainly no facial discrimination,<sup>307</sup> because the provisions do not explicitly treat interstate transactions differently from intrastate transactions. Nor, would it seem, could taxpayers easily demonstrate that the portability provisions were adopted by the people of Florida “for protectionist purposes,”<sup>308</sup> although one might argue that these provisions were designed to protect Florida residents (but not others) from a national economic problem (soaring real estate prices). The determinative question, therefore, is likely to be whether taxpayers would be able to demonstrate that the portability provisions violate the Court’s long-standing injunction against state taxes that discriminate in effect against interstate commerce.

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<sup>302</sup> *Id.*

<sup>303</sup> See also *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 391 (1994) (town ordinance requiring all solid waste from the town be processed at the town transfer station unconstitutionally discriminates against interstate commerce); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Natural Resources*, 504 U.S. 353 (1992) (state law prohibiting private landfill operators from accepting solid waste originating outside the county in which their facilities operate violates Commerce Clause).

<sup>304</sup> *Fulton Corp. v. Faulkner*, 516 U.S. 325, 334 n.3 (1996).

<sup>305</sup> *Maryland v. Louisiana*, 451 U.S. 725, 760 (1981); cf. *Wyoming v. Oklahoma*, 502 U.S. 437, 455 (1992) (“The volume of commerce affected measures only the *extent* of discrimination; it is of no relevance to the determination whether a State has discriminated against interstate commerce) (emphasis in original).

<sup>306</sup> See, e.g., *Opinion of the Justices to the House of Representatives*, 702 N.E.2d 8, 13 (1998) (advising that legislation reducing motor vehicle rental fee for city residents would violate Commerce Clause); *General Motors Corp. v. City of San Francisco*, 81 Cal. Rptr. 2d 544 (Ct. App. 1999) (business tax that differentiates between in-city manufacturers and out-of-city manufacturers violates Commerce Clause).

<sup>307</sup> The Court has adopted a “virtually *per se* rule of invalidity” for taxes that discriminate on their face against interstate commerce. See generally HELLERSTEIN & HELLERSTEIN, *supra* note 141, at ¶ 4.13[1][a].

<sup>308</sup> *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 272 (1984).

The question of whether a tax in effect discriminates against interstate commerce is a fact-sensitive inquiry to which there can be no definitive answer in the absence of record evidence to evaluate. Nevertheless, we believe there is a plausible case to be made (assuming that the evidence can be garnered to support it) that the Save Our Homes portability provisions discriminate in effect against interstate commerce. The evidence of such discrimination might demonstrate, among other things, that the portability provisions effectively imposed a higher cost on interstate than on (many) intrastate relocations; that individual decisions about whether to relocate in Florida were adversely affected by such costs, thereby affecting interstate labor mobility; that businesses were deterred from relocating in Florida due to the increased costs associated with relocating their employees in the state; and that there were nondiscriminatory alternatives for achieving the ostensible purpose of the portability provisions (*e.g.*, making them available to newly arrived homesteaders on an “as if” basis, *i.e.*, as if their prior homesteads had been in Florida).

We have two concluding observations with regard to the discrimination-based Commerce Clause attack on the Save Our Homes portability provisions. First, whatever the exact strength of such a claim, we would predict that such a claim will in fact be brought. The stakes (and rewards) are high enough, and the case good enough, that it is highly unlikely that such provisions would go unchallenged on these grounds. Second, and this point is related to the first, we believe that there is an even stronger case to be made that the Save Our Homes portability provisions violate the prohibition against state restraints on the right to travel, an issue we address below.<sup>309</sup> Because we believe that a constitutional challenge to the Save Our Homes portability provisions on right to travel grounds is probable should those provisions be adopted, it is a sure bet that lawyers litigating such a case will raise Commerce Clause claims as well.

Finally, one might again raise the question – analogous to the question we raised in the previous subpart<sup>310</sup> – whether the foregoing analysis would likewise apply to any Commerce Clause challenge to the existing Save Our Homes assessment limitation even without portability. In many respects, our response is analogous the response we offered to the threshold question of whether the existing Save Our Homes assessment limitation “substantially affects” interstate commerce. As a matter of principle, the same arguments would apply, but the case against the existing Save Our Homes assessment limitation would be substantially weaker. Because intrastate moves would be treated identically to interstate moves, the allegedly discriminatory or burdensome treatment of cross-border activity would be undermined. To be sure, the *Dean Milk* case suggests that discrimination against interstate commerce is not rendered acceptable merely because some forms of intrastate commerce are subject to the same discriminatory burden. Nevertheless, in undertaking the fact-sensitive inquiry into whether the existing Save Our Homes provisions discriminate in effect against interstate commerce, courts would not be able to point to the fact that the provisions effectively imposed a higher cost on interstate than on intrastate relocations, as they could in the case of a portable assessment limitation.

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<sup>309</sup> See *infra* notes 330-82 and accompanying text.

<sup>310</sup> See *supra* notes 292-93 and accompanying text.

Moreover, because the magnitude of the increased tax burden on those making interstate moves would be reduced (because the burden would now be shared with those making intrastate moves), it would be more difficult to demonstrate that these increased costs influenced individual decisions about whether to relocate in Florida, thereby affecting interstate labor mobility, and that businesses were deterred from relocating in Florida due to such increased costs. In short, while there is no clear answer to the question as to whether the existing Save Our Homes would survive Commerce Clause scrutiny, we believe the taxpayers would have a very steep uphill battle in prosecuting such a claim.

## ii. Fair Relation Between Taxes and Services Provided by State

The precise meaning of the fourth prong of *Complete Auto*'s four-part Commerce Clause test – that a tax must be “fairly related to services provided by the State”<sup>311</sup> – was somewhat of a mystery when it was first articulated in 1977, at least insofar as it applied to general revenue measures (like ad valorem property taxes) as distinguished from user fees, which are imposed as a quid pro quo for specific state-provided benefits, such as the use of a highway maintained by state funds or the use of an airport maintained by municipal revenues. In *Commonwealth Edison Co. v. Montana*,<sup>312</sup> the taxpayers argued that Montana's coal severance tax, a general revenue measure, was not fairly related to services provided by the state because the amount of the tax bore no reasonable relationship to the alleged value of the services provided. The Court, however, flatly rejected such a broad reading of the “fairly related” test. The Court declared that the rule does not require a general revenue tax to be “reasonably related to the value of the service provided to the activity.”<sup>313</sup> To the contrary, the Court had taken the position that

“[a] tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the

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<sup>311</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

<sup>312</sup> 453 U.S. 609 (1981).

<sup>313</sup> *Id.* at 622-23. The taxpayers in *Commonwealth Edison* cited *Evansville-Vanderburgh Airport Authority Dist. v. Delta Airlines, Inc.*, 405 U.S. 707 (1972), in support of their argument that there must be a “fair relationship” between the amount of the state's tax and the costs of services provided by the state. The Court dismissed the relevance of the case, since it dealt with a user charge for property owned by a political subdivision of the state rather than a levy imposed for the general support of government. As the Court stated:

The Montana Supreme Court held that the coal severance tax is “imposed for the general support of the government” ... and we have no reason to question this characterization of the Montana tax as a general revenue tax. Consequently, in reviewing appellant's contentions, we put to one side those cases in which the Court reviewed challenges to “user” fees or “taxes” that were designed and defended as a specific charge imposed by the State for the use of state-owned or state-provided transportation or other facilities and services.

*Commonwealth Edison*, 453 U.S. at 621-22.

privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes.”<sup>314</sup>

Although the Court had originally articulated the position in the context of the Due Process Clause, the Court extended the same fundamental principle to its Commerce Clause jurisprudence, observing that “[t]here is no reason to suppose that this latitude afforded the States under the Due Process Clause is somehow divested by the Commerce Clause merely because the taxed activity has some connection to interstate commerce . . . .”<sup>315</sup>

The relevant inquiry under the “fairly related to services provided by the state” requirement was not, as claimed by the plaintiffs, a comparison of “the *amount* of the tax or the *value* of the benefits allegedly bestowed as measured by the costs the State incurs on account of the taxpayer’s activities.”<sup>316</sup> Rather “the test is ... whether ‘the *measure* of the tax [is] reasonably related to the extent of the contact, since it is the activities or presence of the taxpayer in the State that may properly be made to bear a ‘just share of State tax burden.’”<sup>317</sup> Using that legal yardstick, the Court had little difficulty in finding that the Montana severance tax satisfied the test. Since the tax was measured by a percentage of the value of the coal taken, it was by its very nature in “proper proportion” to the taxpayer’s activities in the state.<sup>318</sup>

The Court’s “emasculat[ion]”<sup>319</sup> of the Commerce Clause’s fourth prong creates obvious difficulties for anyone attempting to challenge the Save Our Homes portability provisions (or, for that matter, any other tax) under the “fairly related” test. By precluding a specific inquiry into the benefits received by a new Florida homestead purchaser, the Court’s interpretation of the “fairly related” test appears to make it irrelevant that the newly arrived homeowner receives no more services for the higher taxes she pays than does her next door neighbor owning identical property purchased at the same price on the same day, but whose assessment is lower thanks to the Save Our Homes portability provisions. If “[a] tax is not an assessment of benefits,”<sup>320</sup> the fact that a newly arrived resident pays a higher price for the same benefits as a long-time resident is simply beside the point. It may raise an issue of discrimination<sup>321</sup> – because newly arrived residents are required to pay more than

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<sup>314</sup> *Id.* at 623 (quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-22 (1937)).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 625 (emphasis in original).

<sup>317</sup> *Id.* at 626 (emphasis in original) (quoting *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938)).

<sup>318</sup> *Id.*

<sup>319</sup> “The Court’s interpretation ... emasculates the fourth prong.” *Id.* at 645 (Blackmun, J., dissenting).

<sup>320</sup> *Id.* at 623 (quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-22 (1937)).

<sup>321</sup> See *supra* notes 296-310 and accompanying text.

their “Florida Native” neighbors for the same services – or of an interference with the right to travel,<sup>322</sup> but it does not offend the standard the Court articulated in *Commonwealth Edison* for evaluating “fairly related” claims. The “measure” of the tax, namely the assessed value, is clearly “related to the extent of the contact,” because all of the property (and its value) lies within the taxing jurisdiction.<sup>323</sup>

### 3. Interstate Privileges and Immunities Clause Objections

The interstate Privileges and Immunities Clause generally proscribes unjustified discrimination against *nonresidents*.<sup>324</sup> Because the Save Our Homes portability provisions draw no line between residents and nonresidents, but rather distinguish between two classes of residents, the clause by its terms would not appear to address the precise issues raised by those provisions. Nevertheless, the interstate Privileges and Immunities Clause has been invoked<sup>325</sup> as one of the underlying constitutional bases for the right to travel, which forbids states in some circumstances from denying benefits to new residents that they provide to longer term residents.<sup>326</sup> Accordingly, insofar as the interstate Privileges and Immunities Clause may be a constitutional predicate for limiting a state’s power to treat new Florida homestead owners less favorably than long-time Florida homestead owners, we consider it along with the other clauses that provide the constitutional predicate for the right to travel in the next subpart of this report.

One might argue, however, that the existing Save Our Homes provision, as well as the homestead exemption, discriminates against nonresidents in violation of the interstate Privileges and Immunities Clause, because only residents are entitled to the benefits of the assessment limitation or the homestead exemption. As we observed in Part II, however, in *Reinish v. Clark*<sup>327</sup> a Florida court rejected such an attack on the homestead exemption by owners of second homes in the state. The court concluded that

[t]he difference in taxation treatment between the real property of nonresidents and the property of *some* Florida residents (those who meet the “permanent residence” requirement) is only incidentally related to state residency, and it is explained by the practical effect of a provision that that was intended to provide

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<sup>322</sup> See *infra* notes 330-83 and accompanying text.

<sup>323</sup> For these reasons, it is clear that no challenge to the existing Save Our Homes provision could be mounted on the basis of *Complete Auto*’s “fairly related” test.

<sup>324</sup> See *supra* notes 223-34 and accompanying text.

<sup>325</sup> See, e.g., *Zobel v. Williams*, 457 U.S. 55, 71-81 (1982) (O’Connor, J., concurring in the judgment).

<sup>326</sup> See *supra* notes 240-64 and accompanying text.

<sup>327</sup> 765 So. 2d 197, 205 (Fla. Dist. Ct. App. 2000), *review denied*, 790 So. 2d 1107 (Fla.), *cert. denied*, 534 U.S. 993 (2001), discussed *supra* notes 60-64 and accompanying text.

financial assistance to owners who make the Florida property their permanent residence.<sup>328</sup>

Other courts addressing the same claim in other states have reached the same conclusion.<sup>329</sup>

#### 4. Right to Travel Objections

In our view, the right to travel and, in particular, the U.S. Supreme Court precedents invalidating state efforts to deprive newly arrived residents of the same governmental benefits that are available to long-time residents provide the most powerful constitutional basis for challenging the Save Our Homes portability provisions. As indicated earlier in this report, despite the fact that the “‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence,”<sup>330</sup> there has been considerable uncertainty regarding the precise constitutional source of that right and its precise scope.<sup>331</sup> Without purporting to resolve these uncertainties, we do our best in the ensuing discussion to evaluate the constitutionality of the Save Our Homes portability provisions in light of the precedents bearing most closely on the issues that these provisions raise.

We begin with *Saenz v. Roe*,<sup>332</sup> the Court’s most recent right to travel case. In *Saenz*, California, a state with comparatively generous welfare benefits, sought to reduce its welfare budget by limiting welfare benefits for new residents, during their first year of residence, to the benefits they would have received in the state of their prior residence. As we noted in our earlier discussion of *Saenz*, the Court there identified three different components of the right to travel: (1) “the right of a citizen of one State to enter and to leave another State”; (2) “the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State,” and, (3) “for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.”<sup>333</sup> The first component had little bearing on the disputed provisions in *Saenz* – and, likewise has little bearing on the Save Our Homes portability provisions – because neither “directly impair the exercise of the right to free interstate movement.”<sup>334</sup>

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<sup>328</sup> *Id.* at 210 (emphasis in original).

<sup>329</sup> *Rubin v. Glaser*, 416 A.2d 382 (N.J. 1980); *Markham v. Comstock*, 708 N.Y.S.2d 674 (App. Div. 4th Dep’t), *appeal denied*, 738 N.E.2d 781 (N.Y. 2000), *cert. denied*, 531 U.S. 1079, (2001).

<sup>330</sup> *Saenz v. Roe*, 526 U.S. 489, 498 (1999) (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966)).

<sup>331</sup> See *supra* notes 240-64 and accompanying text.

<sup>332</sup> 526 U.S. 489 (1999).

<sup>333</sup> *Id.* at 500.

<sup>334</sup> *Id.* at 501.

Similarly, the second component<sup>335</sup> had no bearing in *Saenz* – and likewise has no bearing on the Save Our Homes portability provisions – because neither draws a line between residents and nonresidents to which this component of the right to travel is directed.

The key issue raised by *Saenz* – and the key issue raised by the Save Our Homes portability provisions – implicates the third component of the right to travel, namely, “the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State.”<sup>336</sup> The Court found textual support for this component in the Fourteenth Amendment, which provides in pertinent part:

All persons born or naturalized in the United States ... are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.<sup>337</sup>

The constitutional text thus confers upon “newly arrived citizens” both state and federal “political capacities,”<sup>338</sup> and this “adds special force to their claim that they have the same rights as others who share their citizenship.”<sup>339</sup> Accordingly, in prescribing the standard of review for evaluating a state’s justification for treating newly arrived citizens and long-term citizens differently – a matter that could well play a central role in the outcome of any constitutional challenge to the Save Our Homes portability provisions – the Court declared:

Neither mere rationality nor some intermediate standard of review should be used to judge the constitutionality of a state rule that discriminates against some of its citizens because they have been domiciled in the State for less than a year. *The appropriate standard may be more categorical than [the compelling state interest standard] ..., but it is surely no less strict.*<sup>340</sup>

Applying the foregoing analysis to the facts before it, the Court in *Saenz* had little difficulty concluding that California’s limitation of welfare benefits for certain newly arrived residents was unconstitutional. Because the case involved “discrimination against

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<sup>335</sup> The Court found that this component of the right to travel was expressly articulated in the interstate Privileges and Immunities Clause. See *supra* notes 223-35 and 325-29 and accompanying text.

<sup>336</sup> *Id.* at 502.

<sup>337</sup> U.S. CONST. amend XIV, § 1.

<sup>338</sup> *Saenz*, 526 U.S. at 504.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* (citation omitted, emphasis supplied).

citizens who have completed their interstate travel,”<sup>341</sup> it was irrelevant that California’s welfare scheme might have had only an incidental effect on travel itself. The right at issue was “the citizen’s right to be treated equally in her new State of residence.”<sup>342</sup> Furthermore, there was no question about the bona fides of the new residents’ claim to being residents or to their need (compared to long-time residents) to the governmental benefits at issue. Nor was there a danger that granting newly arrived residents welfare benefits would encourage citizens of other states to establish temporary residence in the state in order to acquire some “readily portable benefit, such as a divorce or a college education, that will be enjoyed after they return to their original domicile”<sup>343</sup> Finally, the Court concluded that California’s “entirely fiscal justification”<sup>344</sup> for the reduced welfare benefits for newly arrived residents was not an adequate defense. Significantly, the inadequacy of the defense did not depend on the strength or weakness of this justification. Rather, it rested on the fact that “the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship with residence,”<sup>345</sup> and “[t]hat Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.”<sup>346</sup>

Application of the *Saenz* analysis to the Save Our Homes portability provisions suggests that these provisions would be subject to substantial constitutional objections, although the two cases may be distinguishable. As in *Saenz*, a challenge to the Save Our Homes portability provisions will be brought by citizens who have completed their interstate travel, so it will be “beside the point”<sup>347</sup> that the Florida scheme might have only an incidental effect on travel itself; the right at issue will be “the citizen’s right to be treated equally in her new State of residence.”<sup>348</sup> As in *Saenz*, there will be no question about the bona fides of the new residents’ claim to being residents; their acquisition of a Florida homestead will put that question to rest. As in *Saenz*, there will be no danger that granting newly arrived residents the Save Our Homes portability benefits would encourage citizens of other states to establish temporary residence in the state in order to acquire some “readily portable benefit, such as a divorce or a college education, that will be enjoyed after they return to their original domicile.”<sup>349</sup> Finally, insofar as Florida

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<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 505.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.* at 506.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.* (quoting *Zobel v. Williams*, 457 U.S. 55, 69 (1982)).

<sup>347</sup> *Id.* at 504.

<sup>348</sup> *Id.* at 505.

<sup>349</sup> *Id.*

might seek to defend the limitation of the Save Our Homes portability benefits to former Florida homestead owners on fiscal grounds, the justification (as in *Saenz*) would appear to be inadequate regardless of its strength, because the Privileges and Immunities Clause of the Fourteenth Amendment “does not provide for, and does not allow for, degrees of citizenship based on length of residence.”<sup>350</sup>

Despite the *Saenz*-based argument that can be advanced for finding the Save Our Homes portability provisions unconstitutional, there are several points of distinction between the facts of *Saenz* and the facts surrounding the Save Our Homes portability provisions that could lead courts to find the cases distinguishable for constitutional purposes. First, there is the obvious point that the provisions in *Saenz* explicitly drew distinctions between residents who had been in California for less than a year and other residents. By contrast, the Save Our Homes portability provisions draw no explicit “durational” residency requirement. In our view, this is a difference that courts are not likely to imbue with constitutional significance. As a practical matter, by limiting the Save Our Homes portability benefits to prior owners of Florida homesteads Florida is in effect drawing a line between newly arrived and long-term residents that will be evaluated under the Fourteenth Amendment’s Privileges and Immunities Clause.

Second, one might argue that the facts of *Saenz* are distinguishable from those surrounding the Save Our Homes portability provisions because the provisions in *Saenz* favored *all* long-term residents (as well as some newly arrived residents<sup>351</sup>) over newly arrived residents whereas Save Our Homes portability provisions treat new Florida homestead owners who were prior Florida residents no differently from new Florida homestead owners who previously resided in some other state. The problem with this argument is that a provision that discriminates against outsiders in favor of insiders does not cease to be discriminatory merely because some insiders are likewise victims of the discrimination. For example, in *Memorial Hospital v. Maricopa County*,<sup>352</sup> where the Court held that a one-year county residency requirement as a condition to receiving nonemergency hospitalization at public expense violated the right to travel on equal protection grounds, the Court found it irrelevant that the classification burdened intrastate as well as interstate travel. Similarly, it is settled doctrine under the Commerce Clause that a tax that discriminates against interstate commerce in favor of local interests is not rendered constitutionally tolerable merely because some local interests are likewise burdened by the discrimination.<sup>353</sup>

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<sup>350</sup> *Id.* (quoting *Zobel v. Williams*, 457 U.S. 55, 69 (1982)).

<sup>351</sup> If they came from one of the few states with welfare benefits equal to California’s or from another country.

<sup>352</sup> 415 U.S. 250 (1974).

<sup>353</sup> See *supra* notes 302-04 and accompanying text; HELLERSTEIN & HELLERSTEIN, *supra* note 141, at ¶ 4.13[1A] (discussing scope or “completeness” of discrimination).

Third, one might contend that the needs of newly arrived Florida homesteaders for the benefits of the Save Our Homes portability provisions are less compelling than the needs of previous Florida homesteaders for such benefits, which would distinguish the case from *Saenz*, where the needs of newly arrived and long-time residents for welfare benefits were indistinguishable. The strength of this argument would ultimately depend on whether there are facts to support it. Here, the Court's articulation of the appropriate standard of review in *Saenz* would put a heavy burden on the state. The state could not rely on the "mere rationality" of its classification or "some intermediate standard of review," but would have to demonstrate that discrimination against its newly arrived citizens satisfies either the compelling state interest standard or one even "more categorical,"<sup>354</sup> *i.e.*, even more demanding. Moreover, under such a standard, the state would need to meet its "heavy burden of justification" to demonstrate that, in pursuit of its legitimate objectives, it "has chosen means which do not unnecessarily impinge on constitutionally protected interests"<sup>355</sup> and that its objectives could not be accomplished by "less drastic means."<sup>356</sup>

Finally, one might contend that the Save Our Homes portability provisions are distinguishable from *Saenz* and other durational residency cases, where the state can easily fix the problem simply by removing the restriction at issue and granting all residents, new and old, the same (or some reduced) level of benefits. There is no such easy "fix" to the problem Florida faces, because (one would argue) there is no way to determine the assessment benefits that a newly arrived resident, who was not previously subject to the Save Our Homes regime, may bring to Florida. This administrative concern, like similar administrative concerns that states have advanced in defense of durational residency requirements, is certainly a factor to consider in evaluating the constitutionality of a regime that favors long-term over newly arrived residents. But, as observed in the preceding paragraph, the state would need to meet its "heavy burden of justification" to demonstrate that in pursuit of its legitimate administrative objectives, it "has chosen means which do not unnecessarily impinge on constitutionally protected interests"<sup>357</sup> and that "less drastic means"<sup>358</sup> are not available. In particular, if plaintiffs challenging the Save Our Homes portability provisions could demonstrate an easily administrable alternative means of reducing homestead assessments that provided substantial equality,<sup>359</sup> the state might be hard put to justify the complete denial of benefits.<sup>360</sup> Indeed, in this context the Court has declared that

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<sup>354</sup> *Saenz*, 526 U.S. at 504.

<sup>355</sup> *Memorial Hospital*, 415 U.S. at 269.

<sup>356</sup> *Shapiro v. Thompson*, 394 U.S. 618, 637 (1969).

<sup>357</sup> *Memorial Hospital*, 415 U.S. at 269.

<sup>358</sup> *Shapiro*, 394 U.S. at 637.

<sup>359</sup> For example, the state could lower all homestead tax assessments to the same base year, regardless of change in ownership (perhaps reducing the total available benefit if required by fiscal concerns); or it could provide newly arrived residents with a Save Our Homes portability benefit equal to the difference between

“if there are other, reasonable ways to achieve [a compelling state purpose] with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose ‘less drastic means.’”<sup>361</sup>

*Saenz*, of course, is only the most recent of the Court’s right to travel cases. We devoted considerable attention to the case because it reconfigured right to travel doctrine, and the Court’s earlier precedents must be read in light of *Saenz*. With that caveat in mind, we briefly evaluate the constitutionality of the Save Our Homes portability provisions in light of the Court’s earlier precedents involving distinctions between newly arrived and long-term residents that seem most pertinent to the issue at hand. The cases described in the Part IV of this report invalidating durational residency requirements that served as a precondition for the receipt of governmental benefits by newly arrived residents<sup>362</sup> lend general support to the proposition that the Save Our Homes portability provisions are constitutionally suspect. Thus, plaintiffs challenging the Save Our Homes portability provisions will surely invoke cases like *Shapiro v. Thomson*,<sup>363</sup> *Dunn v. Blumstein*,<sup>364</sup> and *Memorial Hospital v. Maricopa County*,<sup>365</sup> each of which invalidated on equal protection grounds durational residency requirements that were a precondition to the receipt of governmental benefits, because they burdened the fundamental right to travel and could not be justified by a compelling state interest implemented by the least burdensome means available to protect that interest. Among other lessons to be drawn from these cases that bear on the constitutionality of the Save Our Homes portability provisions are (1) the discrimination against new residents need not be purposeful or invidious to be unconstitutional if the *effect* deprives “new residents the same right to vital governmental benefits and privileges in the States to which they migrate as are enjoyed by residents”;<sup>366</sup> (2) the discrimination is not rendered benign by the fact that

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the just value of their prior homestead and the assessed value as if they had lived in Florida; or it could provide some average benefit available to previous Florida homestead owners. The absolute denial of any benefit to newly arrived residents is likely to make the portability provisions more vulnerable to constitutional attack.

<sup>360</sup> Cf. *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998) (invalidating on Privileges and Immunities grounds “categorical” denial of alimony deduction to nonresidents and suggesting that proportionate denial would pass constitutional muster).

<sup>361</sup> *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 909-10 (1986) (quoting precedents, citations omitted, brackets in original).

<sup>362</sup> See *supra* notes 250-56 and accompanying text.

<sup>363</sup> 394 U.S. 618 (1969).

<sup>364</sup> 405 U.S. 330 (1972).

<sup>365</sup> 415 U.S. 250 (1974).

<sup>366</sup> *Maricopa*, 415 U.S. at 261.

intrastate migrants (along with interstate migrants) are burdened by the classification;<sup>367</sup> and (3) and that right at issue – here the benefits of a lower homestead tax assessment – need not itself be “fundamental” to invoke the strict standard of review that the Court has employed in these cases.<sup>368</sup>

*Zobel v. Williams*<sup>369</sup> is another right to travel<sup>370</sup> precedent that could jeopardize the constitutionality of the Save Our Homes portability provisions. In *Zobel*, the Court relied on the Equal Protection Clause in striking down an Alaska statute that distributed a portion of the state’s mineral income to each of the state’s residents in proportion to the number of years the resident had lived in the state. Unlike the cases described in the preceding paragraph, the Alaska scheme did not establish a durational residency threshold for qualifying for specified benefits. Rather, it created “fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State.”<sup>371</sup> The Court declined to specify the appropriate standard of review for right to travel cases, but invalidated the statute because it failed to pass even “rational basis” scrutiny. The Court observed, among other things, that the Alaska regime created a “constitutionally unacceptable” apportionment of benefits that would permit a state “to divide citizens into expanding numbers of permanent classes,” a result that the Court condemned as “clearly impermissible.”<sup>372</sup>

The analogy between the scheme struck down in *Zobel* and the Save Our Homes portability provisions is evident. Both schemes create “fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents,”<sup>373</sup> and would appear to raise similar constitutional concerns. To be sure, the Save Our Homes portability assessment benefits, in contrast to the benefits awarded under Alaska’s scheme, are not based precisely “on how long [residents] have been in the State,”<sup>374</sup> but rather on how long they have owned homestead property in Florida. For reasons suggested above,<sup>375</sup> we do not believe that this distinction would materially affect

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<sup>367</sup> *Id.* at 255-56.

<sup>368</sup> *Id.* (nonemergency medical services).

<sup>369</sup> 457 U.S. 55 (1982).

<sup>370</sup> In fact, the Court mentioned the right to travel only briefly in a footnote and characterized it as “little more than a particular application of equal protection analysis.” *Id.* at 60 n.6.

<sup>371</sup> *Id.* at 59.

<sup>372</sup> *Id.* at 60-61, 65.

<sup>373</sup> *Id.* at 59.

<sup>374</sup> *Id.* at 59.

<sup>375</sup> See *supra* notes 350-51 and accompanying text.

the constitutional analysis, because if there is a distinction drawn between newly arrived homestead owners and long-time homestead owners that, in effect, is a residence-based dichotomy.<sup>376</sup>

Finally, it may be worth mentioning two cases involving “date certain” residency requirements that the Court struck down on equal protection grounds. In *Hooper v. Bernalillo County*,<sup>377</sup> the Court invalidated a New Mexico property tax exemption for Vietnam veterans who had been New Mexico residents prior to May 8, 1976. The Court found that, like the statute in *Zobel*, the New Mexico statute created “fixed, permanent distinctions between ... classes of concededly bona fide residents based on when they arrived in the State.”<sup>378</sup> The Court found it unnecessary to determine the appropriate level of scrutiny to apply to the classification, because the Court found it failed to survive even “rational basis” scrutiny. Similarly, in *Attorney General of New York v. Soto-Lopez*,<sup>379</sup> the Court invalidated a state statute that offered a civil service employment preference only to veterans who were state residents at the time of their induction into the military. A four-Justice plurality concluded that the regime penalized the right to travel and two Justices concurred in the result finding that the scheme did not pass “rational basis” scrutiny under the Equal Protection Clause. If nothing else, *Hooper* and *Soto-Lopez* underscore the skepticism with which the Court treats residence-based classifications.

As noted in our discussion of *Saenz*, there are points of distinction between the Court’s durational and related residency cases and the Save Our Homes portability provisions that could be a basis for concluding that the latter survive constitutional scrutiny notwithstanding the former. These included the fact that the Court’s precedents (1) involved explicit distinctions between newly arrived and long-term residents; (2) favored *all* long-term (or, in *Zobel*, longer-term) residents over newly arrived residents; (3) involved newly arrived residents with needs (or claims to benefits) indistinguishable from those of long-term residents; and (4) concerned governmental interests that could easily be addressed by less discriminatory means. For reasons suggested above, we do not find any of these purported distinctions very persuasive, particularly if the Court were to adhere to its view in *Saenz* that its standard of review is no less categorical than “compelling state interest.” Under this standard of review, fiscal justifications are “beside the point,”<sup>380</sup> “the state has a “heavy burden of justification”<sup>381</sup> to demonstrate its

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<sup>376</sup> It may also be worth recalling that the Florida Supreme Court, relying on *Shapiro, Dunn, Memorial Hospital*, and *Zobel*, struck down the Florida Legislature’s attempt to impose a five-year residency requirement for eligibility for the state’s homestead exemption, although it technically rested its decision entirely on the *state* equal protection clause. *Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1982), *on rehearing*, 426 So. 2d 547 (Fla. 1983), discussed *supra* notes 56-59 and accompanying text.

<sup>377</sup> 472 U.S. 612 (1985).

<sup>378</sup> *Id.* 617 (quoting *Zobel*, 415 U.S. at 59).

<sup>379</sup> 476 U.S. 898 (1986).

<sup>380</sup> *Saenz*, 526 U.S. at 504.

compelling interest for drawing the line at issue, and “if there are other, reasonable ways to achieve [a compelling state purpose] with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose ‘less drastic means.’”<sup>382</sup>

Before we conclude this discussion, it may once again be appropriate to raise the question – as we did in our discussion of the Commerce Clause – whether the foregoing analysis would likewise apply to any right to travel challenge to the existing Save Our Homes assessment limitation even without portability. To be sure, some of the right to travel objections that can be raised against the portability provisions can likewise be raised against the existing Save Our Homes assessment limitation. Specifically, newly arrived bona fide Florida residents who acquire homesteads will be treated less favorably than some long-term Florida residents who own homesteads and, to that extent, they may contend that the Save Our Homes assessment limitation violates *Saenz*’s and *Zobel*’s injunction against “degrees of citizenship based on length of residence.”<sup>383</sup> But there are also significant distinctions between the scope, magnitude, and nature of the favoritism for long-term over newly arrived residents under the portability provisions as compared to the existing Save Our Homes assessment limitation that make the former much more vulnerable to attack than the latter.

First, the scope of the favoritism for long-term over newly arrived residents is much broader under the portability provisions than under the existing Save Our Homes assessment limitation because the favored class includes a much broader class of long-term residents, namely, all long-term homestead owners including those who have acquired new homesteads through intrastate moves. Second, the magnitude of the favoritism for long-term over newly arrived residents is much greater under the portability provisions than under the existing Save Our Homes assessment limitation, because the aggregate amount of relative underassessment for long-term residents increases as they carry their preexisting assessment limitation benefit from homestead to homestead. As a consequence, newly arrived homestead owners will have relatively greater property tax burdens as compared to long-term homestead owners under portability than under the existing Save Our Homes assessment limitation. Third, the portability provisions by their very nature are more closely tied to the status of a *person* as a resident rather than to the status of the property as a homestead. In effect, long-term resident homestead owners are given personal rights to tax reduction that they may carry with them wherever they move in Florida whereas newly arrived residents have no such personal rights. In our judgment, all of these factors provide substantial grounds for distinguishing the portability provisions from the existing Save Our Homes assessment limitation on right to travel grounds, and they suggest why a right to travel challenge to

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<sup>381</sup> *Memorial Hospital*, 415 U.S. at 269.

<sup>382</sup> *Soto-Lopez*, 476 U.S. at 909-10 (1986) (quoting precedents, citations and some internal quotations omitted, brackets in original).

<sup>383</sup> *Saenz*, 526 U.S. at 506 (quoting *Zobel v. Williams*, 457 U.S. 55, 69 (1982)).

the existing Save Our Homes assessment limitation would be considerably more difficult than a similar challenge to the portability provisions.

### **C. Potential Constitutional Challenges to Variations on Basic Portability Proposals and to Other Proposals Related to Homestead Exemption**

The variations on the basic portability proposal set forth above<sup>384</sup> do not raise substantial federal constitutional questions beyond those considered in connection with the basic proposal. To the extent that the variations limit the amount of the benefit being “ported,” there may be a stronger argument in defense of the provision, because the discrimination against newly arrived residents or the burden on interstate commerce is mitigated to that extent. The increase in the strength of such a defense, however, would depend on the extent to which the discrimination or burden were truly mitigated. Without repeating the lengthy analysis set forth above for each of the variations, we briefly identify the federal constitutional considerations, if any, arising out of these variations and our evaluation of their significance.

#### **1. Available Within Qualifying Counties**

As noted in the preceding discussion,<sup>385</sup> federal constitutional restraints are evaluated at the state level, not at the local level. Accordingly, any intrastate limitation will not raise any independent federal constitutional concern. If only one or two counties adopted the portability provision, there might be room for argument that the discrimination against newly arrived residents or the burden on interstate commerce was so small as to be constitutionally insignificant. However, as we also have observed above (and as some of the cases involving *county* defendants clearly demonstrate<sup>386</sup>), any action by a political subdivision of a state is subject to the same restraints that that would be imposed on the state itself if the state had taken the challenged action in question.<sup>387</sup> Moreover, at least in the Commerce Clause context, the Court has made it clear that there is no “de minimis” defense to discrimination,<sup>388</sup> and the Court’s “categorical”<sup>389</sup> rule against preferences for long-term over newly arrived residents under the Privileges and Immunities Clause of the Fourteenth Amendment does not appear to be any more forgiving.

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<sup>384</sup> See *supra* Part V(A)(1).

<sup>385</sup> See *supra* notes 142-45 and accompanying text.

<sup>386</sup> See, e.g., *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

<sup>387</sup> See *supra* notes 144-45 and accompanying text.

<sup>388</sup> *Fulton Corp. v. Faulkner*, 516 U.S. 325, 334 n.3 (1996).

<sup>389</sup> *Saenz v. Roe*, 526 U.S. 489, 504 (1999).

## 2. Capped Amount (Income-Based)

We do not believe that a cap, whether based on income, a dollar ceiling or a specified percentage of the prior differential would have a material impact on the foregoing analysis of the basic portability provision. The discrimination against newly arrived residents and the burden on interstate commerce would remain intact and, unless the limitations were so severe as to eliminate the benefit, the same arguments would seem to apply to the capped amount.

## 3. Capped Amount (Dollar Ceiling or a Specified Percentage of the Prior Differential)

See our discussion of (2).

## 4. Age-Limited (Senior Citizens)

If the portability provision were limited to senior citizens, the discrimination against newly arrived residents and the burden on interstate commerce would be substantially circumscribed and, to that extent, would undercut the force of the constitutional attack on that provision. Indeed, if the provision were so limited, it would more closely resemble the limited portability provision in Proposition 13, which provided under specified conditions for the transfer of a base year assessment to another property of equal or lesser value for any person over age 55.<sup>390</sup> As noted above, the Court in *Nordlinger* recognized the potential constitutional infirmity in such a portability provision, observing that “petitioner alleges that the exemptions to reassessment for transfers by owners over the age of 55 and for transfers between parents and children run afoul of the right to travel, because they classify directly on the basis of California residency.”<sup>391</sup> However, our research discloses no post-*Nordlinger* constitutional challenges to these provisions.

In our view, a constitutional challenge to an age-based portability provision would present a very close case from a federal constitutional perspective. On the one hand, it could be argued that there is clear discrimination against new residents (over the specified age) as compared to longer-term residents over that age in violation of the *Saenz v. Roe* standard for discriminating against such residents. On the other hand, the state could respond that the overwhelming majority of new residents and long-term residents are treated equally and the limited discrimination against a small class of newly arrived homestead owners should not be basis for striking down the statute. In light of the Court’s unwillingness in the past to countenance “de minimis” defenses to discrimination under the Commerce Clause,<sup>392</sup> and the Court’s “categorical”<sup>393</sup> rule against preferences

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<sup>390</sup> CAL. CONST. §§ XIII A(2), XIII (A)(3); CAL. REV. & TAX. CODE § 69.5 (Westlaw 2006).

<sup>391</sup> *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

<sup>392</sup> *Fulton Corp. v. Faulkner*, 516 U.S. 325, 334 n.3 (1996).

for long-term over newly arrived residents under the *Saenz v. Roe*,<sup>394</sup> it is by no means clear that the state's response would carry the day.

#### **5. Directional Limit (Upsize or Downsize Only).**

As in the case of age-based limitations, a directional limit would circumscribe – but not eliminate – the discrimination against newly arrived residents, and the analysis would be essentially the same as that set forth in (4) above.

#### **6. One-Time Availability**

As in the case of age-based limitations, limiting the portability of the Save Our Homes assessment benefit to a single move would circumscribe, but not eliminate, the discrimination against newly arrived residents, and the analysis would be essentially the same as that set forth in (4) above.

#### **7. Alternative Definitions of Portability**

The use of alternative definitions of portability<sup>395</sup> does not appear to have any material impact on the federal constitutional analysis set forth above.

### **D. Modification of the Existing Save Our Homes Provision**

In Part V(B) above, we identified the extent to which the potential constitutional attacks on the Save Our Homes portability provisions might also be leveled against the existing Save Our Homes provision. In this subpart, we consider briefly whether the following proposed modifications of the existing Save Our Homes provision apart from portability might affect the analysis of the constitutionality of the existing provision. Because of the extraordinarily broad leeway the states enjoy in making classifications for tax purposes, apart from those that implicate other constitutional concerns,<sup>396</sup> and because none of the classifications embodied in the proposed modifications discussed below appears to implicate any constitutional concern apart from the power to classify, we do not believe that the proposed modifications will raise any additional federal constitutional concerns other than those relating to the preference for long-term homeowners over newly arrived homeowners addressed above and considered further below.

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<sup>393</sup> *Saenz v. Roe*, 526 U.S. 489, 504 (1999).

<sup>394</sup> See *supra* notes 332-46 and accompanying text.

<sup>395</sup> The most commonly proposed alternative employs the sales price minus the prior homestead's assessed value, the dollar value of which is then subtracted from the purchase price of the new home to determine the new assessed value.

<sup>396</sup> See *supra* notes 156-66 and accompanying text.

## 1. Limit the Differential to a Certain Dollar Value or Percentage of Just Value

Limiting the Save Our Homes assessment benefit to a certain dollar value or percentage of just value would reduce the extent of the preference for long-term homestead owners over new homestead owners. As in the case of the proposed limitations on portability described above in Part V(C) above, however, a dollar or percentage limitation would circumscribe, but not eliminate, the discrimination against newly arrived residents. Accordingly, the impact of a dollar or percentage limitation on the analysis of the constitutionality of the existing Save Our Homes benefit would be analogous to the impact of the limitations discussed above on the constitutionality of the proposed portability provisions. The reduction in the extent of the preference for long-term homestead owners would provide the state with a stronger argument in defense of the provision, because the discrimination against newly arrived residents or the burden on interstate commerce would be mitigated to that extent. The increase in the strength of such a defense, however, would depend on the extent to which the discrimination or burden were truly mitigated which, in turn, would depend on the amount of the limitation.

## 2. Limit the Duration of the Assessment Limitation

Limiting the duration of the Save Our Homes assessment benefit would reduce the extent of the preference for long-term homestead owners over new homestead owners. As in the case of the proposed dollar or percentage limitation, the durational limitation would circumscribe, but not eliminate, the discrimination against newly arrived residents. There is, however, an additional feature of a durational limitation that would provide the state with a stronger defense to the Save Our Homes provision than would a limitation that merely reduced the extent of the discrimination. Unlike a dollar-based or age-based limitation, which merely reduces the number of beneficiaries of the preference, a durational limitation gradually phases out the preference for individual beneficiaries.<sup>397</sup> Consequently, in contrast to the situation in *Zobel v. Williams*,<sup>398</sup> where the Court decried a regime that created “fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State,”<sup>399</sup> a durational limitation would create only temporary distinctions between changing classes of bona fide residents, and, for that reason, might survive a constitutional attack that would defeat a homestead benefit more vulnerable to a *Zobel*-based challenge. In the end, however, the strength of the state’s defense would depend on the extent to which the discrimination or burden were truly mitigated which, in turn, would depend on the length of the durational limitation.

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<sup>397</sup> The analysis might differ depending on whether the durational limitation requirement was tied to the particular homestead property or to the homestead owner.

<sup>398</sup> 457 U.S. 55 (1982).

<sup>399</sup> *Id.* at 59.

### **3. Treat Various Classes of Homeowners Differently**

Providing different treatment to different classes of homeowners (e.g., providing additional benefits to first-time homeowners or to elderly homeowners) could either mitigate or exacerbate the preference that Save Our Homes currently accords to long-term homestead owners vis-à-vis new homestead owners. The analysis would depend entirely on a comparison of the *ex ante* position of particular newly arrived homestead owners with their position after the adoption of the differential treatment. For example, if the Save Our Homes were modified to provide additional benefits for first-time homeowners (e.g., zero percent increase in assessment for five years, while all other homeowners were subject to a 3 percent assessment increase), newly arrived first-time homeowners might have a stronger claim of disparate treatment vis-à-vis first-time homeowners who had resided in the state for five years (as compared to the case they would have had in the absence of the modifications) and a weaker claim of disparate treatment vis-à-vis second-time homeowners who had never had the benefit of the modification. The various modifications that might be proposed and their precise impact on newly arrived residents involve so many permutations that meaningful constitutional analysis of these permutations is impossible without specifying their precise scope.

### **4. Freeze Homestead Assessments After a Specified Period of Time**

If homestead assessments were frozen after a specified period of time, either for all homeowners or for certain classes of homeowners (based on age, income, etc.), it would increase the extent of the preference for long-term homestead owners (or for the specified subclass of homestead owners) over newly arrived homestead owners. Moreover, the preference for “frozen” assessments would increase over time, and make more dramatic the discrimination against the newly arrived homestead owner as compared to his or her “frozen” long-term homestead-owning counterpart. It would therefore appear to make Save Our Homes more vulnerable to an attack under the Court’s precedents by exacerbating the preference for long-term residents over newly arrived residents.

### **E. Increase in the Current Homestead Exemption**

In our view, there are no federal constitutional issues raised by increasing the homestead exemption. A state could exempt homesteads from property taxation altogether without offending any federal constitutional norm of which we are aware.

### **F. Extension of Assessment Limitations to Non-homestead Properties (Commercial, Non-homestead residential, etc.)**

If assessment limitations analogous to Save Our Homes (but without portability) were extended to non-homestead properties, it would closely resemble Proposition 13. We have discussed the constitutional issues raised by Proposition 13 above.<sup>400</sup>

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<sup>400</sup> See *supra* notes 179-88 and accompanying text.

### G. Elimination of Save Our Homes (Effect on Current Beneficiaries)

We do not believe the elimination of Save Our Homes, whether repealed in its entirety or grandfathered in part, would raise federal constitutional issues other than those that we have already identified above. Because no person has a legally cognizable interest in the continued existence of the law as it stands today,<sup>401</sup> the wholesale repeal of Save Our Homes and a return to fair market value assessment on a prospective basis for all homestead owners would offend no constitutional norm of which we are aware. A prospective repeal of Save Our Homes that grandfathered (but did not freeze) Save Our Homes assessment benefits for existing homeowners would have two effects. First, it would increase the extent of the preference for long-term (grandfathered) homestead owners over newly arrived homestead owners. Moreover, the preference for grandfathered homestead owners would increase over time, and make more dramatic the discrimination against the newly arrived homestead owner vis-à-vis his or her grandfathered homestead-owning counterpart. The second – and countervailing – effect would be to eliminate altogether on a prospective basis any discrimination favoring long-term Florida residents and newly arrived residents after the effective date of the repeal of Save Our Homes. On balance, we believe that a repeal of Save Our Homes that grandfathered existing Save Our Homes beneficiaries would make the post-repeal Save Our Homes assessment benefit more vulnerable to an attack under the Court’s precedents, especially *Zobel v. Williams*,<sup>402</sup> because it would create a “fixed, permanent distinction” between “classes of concededly bona fide residents, based on how long they have been in the State.”<sup>403</sup>

A prospective repeal of Save Our Homes that grandfathered (and froze) Save Our Homes assessment benefits for existing homeowners would maintain the preference for long-term (grandfathered) homestead owners over newly arrived homestead owners. However, in contrast to a repeal that grandfathered and did not freeze Save Our Homes assessment benefits, the preference for grandfathered homestead owners would not increase over time. Like the unrestricted grandfathering provision, a grandfathering provision that froze assessment benefits for grandfathered homestead owners would eliminate altogether on a prospective basis any discrimination favoring long-term Florida residents and newly arrived residents after the effective date of the repeal of Save Our

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<sup>401</sup> See, e.g., *James Everard’s Breweries v. Day*, 265 U.S. 545 (1924) (rejecting claim that Volstead Act and Eighteenth Amendment, which rendered many alcohol-related activities illegal, deprived owners of distilled spirits, who were engaged in lawful alcohol-related business prior to Prohibition, of property without due process of law or as taking such property without just compensation). This is not to say that a state could *retroactively* repeal the Save Our Homes benefit. Plainly such a repeal would raise serious due process issues. See *State Department of Transportation v. Lounders*, No. 29-2004-CA-006624, Hillsborough County Circuit Ct., September 27, 2005 (Save Our Homes assessment limitation benefit is a “property right” for which taxpayers are entitled to just compensation in eminent domain proceeding).

<sup>402</sup> 457 U.S. 55 (1982).

<sup>403</sup> *Id.* at 59.

Homes. We believe that a repeal of Save Our Homes that grandfathered (but froze) existing Save Our Homes benefits would make the post-repeal Save Our Homes assessment benefit much less vulnerable to attack under the Court's precedents than would a repeal that did not freeze such benefits, because the limited preference for grandfathered homeowners could be justified by the state's concern with reliance interests and the preference for grandfathered homeowners would not increase over time.

## H. Remedial Issues

If any of the proposed modifications to the Save Our Homes assessment limitation or to the homestead exemption were found to be unconstitutional on the ground that they discriminated against newly arrived residents or imposed an undue burden on interstate commerce,<sup>404</sup> the question would arise as to the appropriate remedy for such a violation.

### 1. Prospective Remedy

On a going forward basis, the resolution of this question is fairly simple, at least as a matter of principle, although the application of this principle can lead to different results. The discrimination or burden would have to be eliminated either by (1) providing the favored treatment to all taxpayers (or to all taxpayers within the same favored class, *e.g.*, persons over age 55) or (2) providing the disfavored treatment to all such taxpayers. State law would determine the appropriate alternative. In the absence of specific state constitutional or statutory direction, it would be up to the state courts to determine whether the favored treatment should be extended to all relevant taxpayers or should be eliminated for all relevant taxpayers under state-law principles governing "severability." This, in turn, is largely a question of perceived constitutional or legislative intent: What would the voters or legislature have done had they known that they could not constitutionally provide the beneficial tax treatment only to the favored class – provide it to all or provide it to none?<sup>405</sup>

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<sup>404</sup> We limit our discussion to these two potential federal constitutional infirmities in the proposed changes to the Save Our Homes amendment or the homestead exemption, because we view them as the only plausible bases for a serious federal constitutional challenge to the proposed changes. The ensuing analysis would be likewise applicable to any challenge to the existing Save Our Homes amendment on Privileges and Immunities or Commerce Clause grounds.

<sup>405</sup> In Florida, there is a statutory presumption that when any sales or use tax exemption is declared unconstitutional, the exempted sale or use should be subjected to tax to the same extent as if the exemption had never been enacted. Fla. Stat. § 212.21(2) (Westlaw 2006). See *Department of Revenue v. Magazine Publishers of America, Inc.*, 604 So. 2d 459 (Fla. 1997) (although exemption from use tax granted to religious publications violated First Amendment, exemption was severable and taxpayer was responsible for tax on real estate advertising publications). See also Fla. Stat. § 196.1976 (Westlaw 2006) (expressing legislative intent with respect to severability of specified exemptions for hospitals and nursing homes); Fla. Stat. § 199.303 (Westlaw 2006) (expressing legislative intent with respect to severability of intangible personal property tax provisions); Fla. Stat. § 210.22 (Westlaw 2006) (expressing legislative intent with respect to severability of tobacco tax provisions). However, when the legislature unconstitutionally attempts to limit a constitutionally authorized exemption, the appropriate remedy is to sever the unconstitutional limitation. See *Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1982), *on rehearing*, 426 So. 2d 547 (Fla. 1983) (severing unconstitutional five-year durational residency requirement for eligibility for

The existing Save Our Homes provision contains the following severability provision:

The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.<sup>406</sup>

We read this provision as meaning that a determination of the unconstitutionality of any provision of the Save Our Homes amendment would lead to the invalidation of only that provision and would not authorize a court to “rewrite” the amendment in any other way to preserve its constitutionality. Consequently, if Save Our Homes is unconstitutional because it provides benefits to long-term homestead owners that it does not provide to newly arrived homestead owners, the appropriate remedy would be to invalidate the provision according a preference to long-term homestead owners, namely, eliminating the assessment benefit, rather than “rewriting” the amendment in an effort to provide equal benefits to all bona residents. If this severability provision were applicable to any changes to Save Our Homes, the same analysis would apply. The benefit would be eliminated and courts would not undertake to revise the provision to extend the benefit to the previously disfavored classes. Obviously, if a different severability provision were adopted<sup>407</sup> – for example, one that explicitly extended the assessment benefits to all similarly situated taxpayers, assuming that the preference for long-term residents were struck down – then the result under the controlling state-law principles would be the opposite.

## 2. Retrospective Remedy

The same state law principles that govern the remedy issue on a prospective basis would also govern the analysis on a retrospective basis, but subject to one very important additional consideration. The remedy would have to satisfy federal due process criteria for relief when a taxpayer has been required under duress to pay taxes that are later determined to be unconstitutional. This is an issue with which the State of Florida has some familiarity, because it was involved in the landmark Supreme Court decision delineating the federal constitutional mandate in this context.

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constitutional homestead exemption thereby making exemption available to all permanent residents). The *Osterndorf* case is discussed *supra* notes 56-59 and accompanying text.

<sup>406</sup> FLA. CONST. art. VII, § 4(c)(7).

<sup>407</sup> Or, if we are wrong in our reading of the existing severability provision.

**a. Federal Constitutional Principles**

*McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*<sup>408</sup> involved a Florida liquor excise tax that favored local over out-of-state products. The Florida Supreme Court had invalidated the tax as violating the Commerce Clause on the basis of established Supreme Court precedent, in particular *Bacchus Imports, Ltd. v. Dias*.<sup>409</sup> Nevertheless, the Florida court refused to order a refund of the tax, holding that its decision should apply only prospectively. The principal issue before the U.S. Supreme Court was "whether prospective relief, by itself, exhausts the requirements of federal law"<sup>410</sup> when a taxpayer has involuntarily paid a tax that has been held unconstitutionally discriminatory under settled Commerce Clause principles.

The Court's answer to this question was unequivocal:

The answer is no: if a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.<sup>411</sup>

The Court's conclusion followed from a number of its earlier cases that had established the rule that "because the exaction of a tax constitutes a deprivation of property, the State must provide procedural safeguards against unlawful exactions in order to satisfy the demands of the Due Process Clause."<sup>412</sup>

The question, then, became exactly what "meaningful backward-looking relief" entailed. The Court first observed that, in some circumstances, such relief must consist of a refund. For example, if a state has levied a tax it is wholly without constitutional power to impose because it lacks jurisdiction over the taxpayer or because the taxpayer is immune from taxation under federal law, then the state would have "no choice but to 'undo' the unlawful deprivation by refunding the tax previously paid under duress, because allowing the State to 'collect these unlawful taxes by coercive means and not incur any obligation to pay them back ... would be in contravention of the Fourteenth Amendment."<sup>413</sup>

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<sup>408</sup> 496 U.S. 18 (1990).

<sup>409</sup> 468 U.S. 263 (1984).

<sup>410</sup> *McKesson*, 496 U.S. at 31.

<sup>411</sup> *Id.*

<sup>412</sup> *Id.* at 36.

<sup>413</sup> *Id.* at 39 (quoting *Ward v. Love County Bd. of Comm'rs*, 253 U.S. 17, 24 (1920)).

Florida, however, was not wholly without power to impose the liquor excise tax in question. Florida unquestionably possessed power to impose a liquor excise tax. The vice of the Florida tax was that the state's taxing power had been exercised so as to discriminate against interstate commerce, and the tax was unconstitutional only insofar as it operated in that manner. As a consequence, Florida was not limited to providing "meaningful backward-looking relief" through a refund remedy. To be sure, "[t]he State may . . . choose to erase the property deprivation itself by providing petitioner with a full refund of its tax payments."<sup>414</sup> But the Court also made it clear that "a State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination."<sup>415</sup>

Florida was free to "reformulate and enforce the liquor tax during the contested period in any way that treats petitioner and its competitors in a manner consistent with the dictates of the Commerce Clause."<sup>416</sup> Even though this might not provide a taxpayer with a refund, it would provide the taxpayer with "meaningful backward-looking relief" because the taxpayer, by hypothesis, would be subjected to a tax that conformed to the commands of the Commerce Clause. Any deprivation of the taxpayer's property would therefore be pursuant to a valid scheme and would thus provide the taxpayer with "all of the process it is due: an opportunity to contest the validity of the tax and a 'clear and certain remedy' designed to render the opportunity meaningful by preventing any permanent unlawful deprivation of property."<sup>417</sup>

The Court then suggested the options available to Florida that would satisfy its constitutional obligation to provide the taxpayer with meaningful retrospective relief. Florida could do so by refunding to McKesson the difference between the taxes it paid and the tax it would have paid had it enjoyed the same rate reductions as its favored competitors.<sup>418</sup> Alternatively, Florida might, consistent with federal and state constitutional restrictions on retroactive legislation, assess back taxes from McKesson's competitors that received favored tax treatment, thereby retrospectively eliminating the discrimination.<sup>419</sup> Furthermore, Florida might devise some combination of these two forms of relief, providing partial refunds and imposing a partial retroactive tax on the taxpayer's favored competitors.<sup>420</sup>

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<sup>414</sup> *Id.* at 39.

<sup>415</sup> *Id.* at 40.

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> *Id.* at 41.

Finally, it is worth noting that the state's obligation to provide meaningful “postdeprivation” relief was a consequence of its decision not to provide the taxpayer with a meaningful opportunity to contest the tax prior to the payment. Thus, if the state had authorized the taxpayer to bring suit to enjoin the tax or to assert its constitutional objections in a defense to a tax enforcement proceeding, the state would have satisfied its due process obligation to provide the taxpayer with an opportunity to be heard before it was deprived of any significant property interest. Under such circumstances, the obligation to provide meaningful retrospective relief would never arise because the taxpayer would have received all the process to which it is due prior to paying the tax. However, because states are not required to provide such “predeprivation process,” and because Florida, like most states, chose to require taxpayers to tender their tax payments before their objections were entertained and resolved in a meaningful hearing,<sup>421</sup> it had to “provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a ‘clear and certain remedy’ for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.”<sup>422</sup>

**b. Application of Federal Remedial Principles to Determination That Save Our Homes or Modifications Thereto Unconstitutionally Discriminate Against New Residents or Burdens Interstate Commerce**

As we observed above,<sup>423</sup> a Florida court invalidating the Save Our Homes amendment or some modification thereof on federal constitutional grounds would likely find as a matter of state law that the provision according preferential treatment to certain long-term homestead owners should be severed and that all relevant taxpayers should

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<sup>421</sup> A Florida court subsequently suggested that a taxpayer does have an adequate predeprivation remedy, namely, the right to file suit and to pay the contested tax into the court registry, and therefore does not have a right to backward-looking relief, at least when challenging sales taxes. *Sharper Image Corp. v. Department of Revenue*, 704 So. 2d 657 (Fla. Dist. Ct. App. 1997). *But see Newsweek, Inc. v. Florida Dep't of Revenue*, 522 U.S. 442 (1998) (per curiam) (summarily vacating Florida decision in which state court had denied relief using “bait and switch” tactics).

<sup>422</sup> *McKesson*, 496 US at 37-38 (footnotes and citations omitted). The Court's analysis also served to place the common-law rule that taxpayers have no right to the refund of a tax that is “voluntarily” paid in constitutional perspective. The Due Process Clause requires meaningful retrospective relief only when a tax is paid involuntarily or under duress. The Court observed, however, that:

if a State chooses not to secure payments under duress and instead offers a meaningful opportunity for taxpayers to challenge their validity in a predeprivation hearing, payments tendered may be deemed “voluntary.” The availability of a predeprivation hearing constitutes a procedural safeguard against unlawful deprivations sufficient by itself to satisfy the Due Process Clause, and taxpayers cannot complain if they fail to avail themselves of this procedure.

*Id.* at 38 n.21. The question whether a tax is paid “voluntarily” or “under duress” thus becomes a threshold question in the constitutional inquiry. The Court has held that a “tax is paid under ‘duress’ in the sense that the State has not provided a fair and meaningful predeprivation procedure” when a tax must be paid to avoid economic sanctions or the seizure of the taxpayer's property. *Id.*

<sup>423</sup> See *supra* notes 406-07 and accompanying text.

receive the less favorable rather than the more favorable treatment. If such treatment could be provided on a retrospective basis for all “open” years<sup>424</sup> – *i.e.*, if the state could retroactively recover the appropriate taxes from all previously favored taxpayers – then, as the Court suggested in *McKesson*, those challenging the unconstitutional provisions would have no constitutional grievance because they would have been provided with equality on a retrospective basis.<sup>425</sup>

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<sup>424</sup> That is, for all tax years that were still subject to judicial challenge under the applicable statute of limitations.

<sup>425</sup> This assumes that the Court’s analysis in *McKesson* would apply to the remedial issues raised by a determination that Save Our Homes or some modification thereof were unconstitutional because of its preference for long-term over newly arrived residents under *Saenz v. Roe* (see *supra* notes 332-46 and accompanying text) or as imposing an undue burden on interstate commerce. See *supra* notes 273-308 and accompanying text. We believe that this assumption is justified for several reasons.

First, although *McKesson* involved due process requirements of “meaningful backward-looking relief” for invalidation of a tax that has been held unconstitutionally discriminatory under the Commerce Clause, there is no reason to believe that this analysis would be any different for other instances of unconstitutional discrimination. Indeed, the Court’s analysis in *McKesson* drew on precedents involving discrimination under the Equal Protection Clause (see, e.g., *Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931)). Moreover, the key holding of the opinion is that

if a State places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax’s legality, the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify *any unconstitutional deprivation*.

*McKesson*, 496 U.S. at 31 (emphasis supplied). Hence there is no basis for limiting *McKesson*’s due process analysis to Commerce Clause discrimination because it applies by its terms to “any constitutional deprivation.”

Second, we believe that there is no serious basis for suggesting that *McKesson*’s requirement of “meaningful backward-looking relief” may be inapplicable on the theory that a “new” rule of law announced in a case invalidating Save Our Homes or some variation thereof would be applied on a prospective-only basis. Whatever authority may once have existed for applying constitutional decisions on a prospective-only basis, the Court’s recent precedents in this area (and the departure from the Court of the few Justices who favored prospective-only application in some instances, namely, Chief Justice Rehnquist and Justice O’Connor) strongly suggest that prospective-only decision making, at least in the constitutional context, is a relic of the past. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 279 (1994) (“While it was accurate in 1974 to say that a new rule announced in a judicial decision was only presumptively applicable to pending cases, we have since established a firm rule of retroactivity. See *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993); *Griffeth v. Kentucky*, 479 U.S. 314 (1987)”); see generally Hellerstein & Hellerstein, *supra* note 141, at ¶ 4.16[4]. Although the Florida Supreme Court held in a 1982 decision that its judgment striking down Florida’s durational residency requirement for a homestead exemption should be applied on a prospective only basis (except for those taxpayers who had timely challenged the requirement), *Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1982), *on rehearing*, 426 So. 2d 547 (Fla. 1983), the decision rested entirely on state constitutional grounds and therefore did not raise issues of “meaningful backward looking relief” for violations of federal law. Moreover, the 1982 decision antedated subsequent U.S. Supreme Court decisions on prospective constitutional decision-making, with which *Osterndorf* cannot be reconciled. See Hellerstein & Hellerstein, *supra* note 141, at ¶ 4.16[4]

The key question, however, is whether Florida could in fact provide equal treatment to all relevant taxpayers on a retroactive basis by collecting additional taxes from those who had previously benefited from the Save Our Homes assessment limitation rather than providing refunds to those who had not benefited (or had benefited less). Even assuming that any state law claim of unconstitutionally retroactive taxation would be defeated by the argument that the Save Our Homes severability provision put all taxpayers on notice that the consequence of finding Save Our Homes unconstitutional would be the elimination of the assessment limitation, a serious, if not insurmountable, objection would remain, namely, that Florida could not, as a practical matter, retroactively collect taxes from the Save Our Homes beneficiaries in a manner that in fact would create the constitutionally required equality. Whether such equality in fact could be achieved would depend on such factors as (1) the state's ability to identify the taxpayers who benefited from the challenged provision during the years at issue; (2) the state's ability to determine the current whereabouts of the taxpayers so identified; and (3) the state's ability to enforce collection of the previous tax preference against these taxpayers, taking account of (a) the possibility that many of the taxpayers may no longer be resident in Florida and (b) the possibility that the financial circumstances of such taxpayers would in many cases make

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Finally, we do not believe taxpayers' right to "meaningful backward looking relief" could be defeated by arguing that they had a meaningful "predeprivation" opportunity to challenge their property taxes prior to payment through an injunction or otherwise. While Florida law provides a sixty-day window for taxpayers to challenge the assessment of their property, Section 194.171, F.S., it is unclear whether the opportunity for such a challenge would be considered an adequate predeprivation remedy for a constitutional challenge to an assessment limitation. See *Reinish v. Clark*, 765 So. 2d 197 (Fla. Dist. Ct. App. 2000), where the court determined that a constitutional challenge to the homestead exemption by out-of-state owners of Florida real property was not a challenge to the assessment placed on the property. Moreover, even if such predeprivation challenges were authorized, the existence of property tax refund provisions in Florida would leave the state vulnerable to the argument that it was engaged in unconstitutional "bait and switch," if it made such an argument. See *Reich v. Collins*, 513 U.S. 106 (1994). In *Reich*, a unanimous U.S. Supreme Court held that Georgia's attempt to deny taxpayers the right to a refund based on the existence of a predeprivation remedy when it held out to taxpayers the right to a postdeprivation remedy on which they could reasonably rely was unconstitutional. The Court recognized that "Georgia has the flexibility to maintain an exclusively predeprivation scheme, so long as the scheme is 'clear and certain.'" <sup>425</sup> *Id.* at 110-11. "But what a State may *not* do," the Court continued,

and what Georgia did here, is to reconfigure its scheme, unfairly, in *midcourse* – to "bait and switch," as some have described it. Specifically, in the mid-1980's, Georgia held out what plainly appeared to be a "clear and certain" postdeprivation remedy, in the form of its tax refund statute, and then declared, only after Reich and others had paid the disputed taxes, that no such remedy exists. In this regard, the Georgia Supreme Court's reliance on Georgia's predeprivation procedures was entirely beside the point (and thus error), because even assuming the constitutional adequacy of these procedures – an issue on which we express no view – no reasonable taxpayer would have thought that they represented, in light of the apparent applicability of the refund statute, the *exclusive* remedy for unlawful taxes.

*Id.* at 111 (emphasis in original). See also *Newsweek, Inc. v. Florida Dep't of Revenue*, 522 U.S. 442 (1998) (1998) (per curiam) (summarily vacating Florida decision in which state court had denied relief using "bait and switch" tactics condemned in *Reich*).

it burdensome, if not impossible, to require payment of the back taxes (and appropriate interest) for several years. In the end, there is no simple answer to the question posed at the beginning of the paragraph; instead, it will depend on the facts and circumstances surrounding the challenged preference at issue and the class of taxpayers to which it applies. We nevertheless feel confident in predicting that any effort by the state to remedy the unconstitutional preference by back taxing the previously favored taxpayers rather than granting appropriate refunds to the previously disfavored taxpayers will embroil the state in litigation for years.

## **APPENDIX C**

## Appendix C1 - County Property Appraisers

*Responses received from 47.7% or 31 out of 65 possible respondents  
(two abstained because of their membership on the Governor's Property Tax Reform Committee)*

1. Do you believe that the property tax burden in Florida is shared equitably

a) among **all property owners**?

Yes	No
2 6.9%	27 93.1%

Please explain:

- All, or multiple, exemptions make the tax system inequitable (includes SOH) - **11**
- Save Our Homes has made tax system inequitable - **9**
- The entire system is inequitable - **3**
- Homestead exemptions have made the tax system inequitable - **1**

b) among all owners of **homestead** property?

Yes	No
5 17.2%	24 82.8%

Please explain:

- Save Our Homes has made tax system inequitable - **16**
- All, or multiple, exemptions make the tax system inequitable (includes SOH) - **3**
- Exemptions have caused more cheating and fraud - **1**

c) among all owners of **non-homestead residential** property?

Yes	No
19 63.3%	11 36.7%

Please explain:

- All, or multiple, exemptions make the tax system inequitable (includes SOH) - **5**
- Save Our Homes has made tax system inequitable - **1**
- The entire system is inequitable - **1**

d) among all owners of **nonresidential** property?

Yes	No
16 55.2%	13 44.8%

Please explain:

- All, or multiple, exemptions make the tax system inequitable (includes SOH) - **6**
- Save Our Homes has made tax system inequitable - **1**
- The entire system is inequitable - **1**

If you answered **No** to any of the above questions, what alternatives or improvements would you recommend that would result in a more equitable distribution of the tax burden?

- Specific recommendations - **8**
  - Institute a three or five-year recapture provision for agricultural land converted to other uses - **2**
  - Tax the first \$25,000 of a property's value or 50% of the 1<sup>st</sup> \$50,000 in value - **2**
  - For portability, make it a percentage of the differential and limit the years to which it would apply - **1**
  - Require Schedule F (IRS) to accompany application for agricultural classified use or tighten agriculture rules - **1**
  - Consider moving toward a system of valuation based on "Value in Use" or existing use - **1**
  - Exclude Florida citizens age 65 and over from paying school taxes, and cap the homestead assessment of senior citizens 65 and over with a household income of \$50,000 or less - **1**
- Abolish all or multiple, exemptions - **6**
- Cap the rate of growth on all properties or tie assessed value to a percentage of market value for all properties - **3**
- Abolish Save Our Homes - **4**
- Introduce portability - **3**
- Control/limit government spending (i.e. budget growth) or allowable millage rates - **3**

- *Increase Homestead exemption - 3*
- *Find an alternative revenue source to property taxes - 2*
- *Eliminate cheating and fraud related to Save Our Homes and Homestead - 1*
- *Abolish Homestead Exemptions - 1*

2. To what extent do you believe that property taxes influence decisions of residential property **buyers** in Florida?

<b>Not at all</b>	<b>Somewhat</b>	<b>Greatly</b>
1	19	11
3.2%	61.3%	35.5%

Please explain:

- *Increased tax burden (among other things) makes a new or second home less affordable - 8*
- *People do not want to lose Save Our Homes tax savings - 3*

3. Do you believe that Florida property taxes have an impact on the purchase of second homes for use as vacation homes or rental properties?

<b>Yes</b>	<b>No</b>	<b>Both*</b>
27	1	2
90.0%	3.3%	6.7%

\*Response is split based on Income levels or split due to different response for vacation and rental property

Please explain:

- *Increased tax burden (among other things) makes a new or second home less affordable - 14*
- *People who can afford a second home don't worry about their taxes, or the burden is greater or lesser depending on income - 2*
- *Exemptions have caused more cheating and fraud - 1*

4. Do you believe that the "Save Our Homes" assessment differential

a) significantly encourages an individual with homestead property to stay in their home rather than buying another home in Florida?

<b>Yes</b>	<b>No</b>	<b>Both</b>
29	0	1
96.7%	0.0%	3.3%

\*Response is split based on Income levels

Please explain:

- *People do not want to lose Save Our Homes tax savings - 22*
- *Save Our Homes has caused people to move out of state due to increased taxes - 1*

b) significantly discourages an individual who doesn't own property from purchasing homestead property?

<b>Yes</b>	<b>No</b>	<b>Both</b>
5	22	1
17.9%	78.6%	3.6%

\*Response is split based on Income levels

Please explain:

- *People know they will receive Save Our Homes tax savings in the future - 5*
- *Increased tax burden (among other things) makes a new or second home less affordable - 3*
- *Full disclosure and notice of actual tax difference upon sale is needed - 1*

5. Are there any alternatives to the Florida property tax system that you would recommend?

- *Abolish all or multiple, exemptions - 6*
- *Find an alternative revenue source to property taxes - 5*
- *Control/limit government spending (i.e. budget growth) or allowable millage rates - 5*
- *Cap the rate of growth on all properties or tie assessed value to a percentage of market value for all properties - 3*
- *Introduce portability - 2*
- *Abolish Homestead exemptions - 1*

6. a) What do you believe is the primary purpose of the **Truth in Millage (TRIM)** process (Chapter 200, F.S.)?  
*NOTE: Responses were varied and wide-ranging, and could not be grouped. Property Appraisers do not share a consistent vision of the primary purpose of TRIM in Florida.*

- b) Do you believe that **TRIM** is achieving this purpose?

Yes	No
17	14
54.8%	45.2%

Please explain:

- *Property owners do not bother to read the TRIM - 7*
- *TRIM notice is confusing, hard to understand or provides too much information - 5*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 5*

7. Do you believe that the **Notice of Proposed Property Taxes** (TRIM notice) is effective in communicating to taxpayers relevant information concerning their property assessment, their proposed taxes, and the taxing authority's proposed budget?

Yes	No
14	12
53.8%	46.2%

Please explain:

- *TRIM notice is confusing, hard to understand or provides too much information - 8*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 5*
- *Property owners do not bother to read the TRIM notice - 3*
- *Specific recommendations - 3*
  - *TRIM - Do not exclude "new construction" from taxable value when calculating the rollback rate - 1*
  - *TRIM - Split the single notice into several notices from different entities - 1*
  - *TRIM - Include the percentage of budget increases, making the notice more similar to the newspaper publication - 1*

8. Do you have any suggestions for how the **Notice of Proposed Property Taxes** (TRIM notice) could be changed to increase its effectiveness?

- *Specific recommendations - 16*
  - *TRIM - Include the percentage of budget increases, making the notice more similar to the newspaper publication - 8*
  - *TRIM - Eliminate "Do Not Pay" or replace with "Please Read" - 3*
  - *TRIM - Split the single notice into several notices from different entities - 3*
  - *TRIM - Remove or eliminate the roll-back concept - 2*
  - *TRIM - Annotated envelopes - 1*
  - *TRIM - Do not include information regarding non-ad valorem charges and fees - 1*
- *TRIM notice is confusing, hard to understand or provides too much information - 1*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 1*

9. Please feel free to mention any additional issues related to the property tax structure in Florida that should be considered by the Legislature.

- *Specific recommendations - 6*
  - *TRIM - Do not exclude "new construction" from taxable value when calculating the rollback rate - 2*
  - *TRIM - Change the timing/calendar to require budget development prior to roll submission - 2*
  - *Require Schedule F (IRS) to accompany application for agricultural classified use or tighten agriculture rules - 2*
  - *Institute a three or five-year recapture provision for agricultural land converted to other uses - 1*
  - *Replace Save Our Homes with an income-based circuit breaker - 1*
  - *TRIM - Annotated envelopes - 1*
- *Abolish all or multiple, exemptions - 2*
- *Cap the rate of growth on all properties or tie assessed value to a percentage of market value for all properties - 2*
- *Find an alternative revenue source to property taxes - 2*
- *Introduce portability - 1*
- *Control/limit government spending (i.e. budget growth) or allowable millage rates - 1*

## Appendix C2 - County Tax Collectors

*Responses received from 32.8% or 22 out of 67 possible respondents*

1. Do you believe that the property tax burden in Florida is shared equitably

a) among **all property owners**?

Yes	No
8 53.3%	7 46.7%

Please explain:

- *All, or multiple, exemptions make the tax system inequitable (includes SOH) - 1*
- *Save Our Homes has made tax system inequitable - 1*

b) among all owners of **homestead** property?

Yes	No
9 64.3%	5 35.7%

Please explain:

- *Save Our Homes has made tax system inequitable - 3*

c) among all owners of **non-homestead residential** property?

Yes	No
9 69.2%	4 30.8%

Please explain:

- *All, or multiple, exemptions make the tax system inequitable (includes SOH) - 1*

d) among all owners of **nonresidential** property?

Yes	No
7 58.3%	5 41.7%

If you answered **No** to any of the above questions, what alternatives or improvements would you recommend that would result in a more equitable distribution of the tax burden?

- *Specific recommendations - 2*
  - *Change property assessment basis from current selling price to 3-year average prevailing market value - 1*
  - *Cap the rate of growth on all properties or tie assessed value to a percentage of market value for all properties - 1*
- *Limit Property Appraiser discretion - 2*
- *Abolish all or multiple, exemptions - 2*
- *Control/limit government spending (i.e. budget growth) or allowable millage rates - 1*
- *Abolish Homestead exemptions - 1*

2. To what extent do you feel that the requirements of the Florida property tax system facilitate taxpayer compliance?

Not at all	Somewhat	Greatly
0 0.0%	6 28.6%	15 71.4%

Please explain:

- *Enforcement of tangible personal property tax is problematic - 2*
- *Law should require mortgage and title companies to provide information to 1<sup>st</sup> time home buyers - 1*
- *Taxpayer information is available on websites - 1*

3. To what extent do you feel that the property tax system:

a) is easy to understand for the taxpayer?

Not at all	Somewhat	Very
2	9	9
10.0%	45.0%	45.0%

Please explain:

- *Notification is needed to taxpayers that it is taxing authorities that establish amount of taxes through setting of millage - 2*
- *Tangible personal property is confusing - 1*
- *Understanding delinquent taxes is confusing - 1*

b) minimizes compliance costs?

Not at all	Somewhat	Greatly
1	9	8
5.6%	50.0%	44.4%

Please explain:

- *Collecting/advertising delinquent taxes is costly - 1*
- *Taxpayers who mistakenly pay the full amount when a discounted amount is due based on when they pay their taxes should not receive an automatic refund unless they request it - 1*
- *Does not minimize compliance costs for tangible personal property taxes - 1*

c) increases the visibility and awareness of the taxes being paid?

Not at all	Somewhat	Greatly
4	6	11
19.0%	28.6%	52.4%

Please explain:

- *Need better information as to how taxes fund vital services of taxing authorities - 1*
- *Notification is needed to taxpayers that it is taxing authorities that establish amount of taxes through setting of millage - 1*
- *Taxpayer education is critical to foster increased understanding of property tax system - 1*

4. To what extent do you feel that the enforcement and collection of property tax revenues is accomplished in a:

	Not at all	Somewhat	Greatly
a) Fair manner	1 4.5%	1 4.5%	20 90.9%
b) Consistent manner	0 0.0%	3 13.6%	19 86.4%
c) Professional manner	0 0.0%	1 4.5%	21 95.5%
d) Predictable manner	0 0.0%	2 9.5%	19 90.5%
e) Cost effective manner	1 4.5%	6 27.3%	15 68.2%

5. Are there any alternatives to the Florida property tax system that you would recommend?

Please explain:

- *Control/limit government spending (i.e. budget growth) or allowable millage rates - 2*
- *Find an alternative revenue source to property taxes - 1*
- *Exemptions should be expressed as a percentage versus a dollar value - 1*
- *Eliminate/Reduce advertising requirement for delinquent taxes - 1*
- *Explore flat tax system - 1*
- *Limit Property Appraiser discretion - 1*
- *Restructure administration of tangible personal property - 1*

6. a) What do you believe is the primary purpose of the **Truth in Millage (TRIM)** process (Chapter 200, F.S.)? *Responses were varied and wide-ranging, and could not be grouped. Tax Collectors do not share a consistent vision of the primary purpose of TRIM in Florida.*

c) Do you believe that **TRIM** is achieving this purpose?

Yes	No
11	5
68.8%	31.3%

Please explain:

- *Property owners do not bother to read the TRIM - 5*
- *TRIM notice is confusing, hard to understand or provides too much information - 2*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 1*

7. Do you believe that the **Notice of Proposed Property Taxes** (TRIM notice) is effective in communicating to taxpayers relevant information concerning their property assessment, their proposed taxes, and the taxing authority's proposed budget?

Yes	No
12	5
70.6%	29.4%

Please explain:

- *TRIM notice is confusing, hard to understand or provides too much information - 6*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 1*
- *Non-ad valorem assessments should be included on the TRIM notice - 3*

8. Do you have any suggestions for how the **Notice of Proposed Property Taxes** (TRIM notice) could be changed to increase its effectiveness?

- *Specific recommendations - 4*
  - *TRIM - Include non-ad valorem assessments - 3*
  - *TRIM - Remove or eliminate the roll-back concept - 1*
- *TRIM doesn't provide the right kind of information regarding taxes and budgets - 2*

9. Please feel free to mention any additional issues related to the property tax structure in Florida that should be considered by the Legislature.

- *Revamp tangible personal property provisions - 2*
- *Require Sheriff's Office involvement in delinquent tangible tax warrant process provided in Chapter 197, Florida Statutes - 1*
- *Increase tax relief for seniors - 1*
- *Revise installment payment and electronic billing processes - 1*
- *Eliminate the 5 percent guarantee rate of interest on tax sale certificates and go with bid rate - 1*
- *Change Property Appraiser assessment date to November 1 to eliminate glitch resulting from sale of properties - 1*
- *Cap the rate of growth on all properties or tie assessed value to a percentage of market value for all properties - 2*

## Appendix C3 - School District Superintendents

Responses received from 62 of 67 school superintendents or their representatives– 92.5% response rate

1. Was your school district's student enrollment lower than anticipated for the 2005-06 school year?

Yes	No	Don't Know
28 45.2%	33 53.2%	1 1.6%

**For those that responded “Yes” in Question 1 above:**

2. Please indicate the extent that the factors below affected the lower than anticipated student enrollment.

Factor	Significantly (1)	Greatly (2)	Moderately (3)	Marginally (4)	Not At All (5)	Don't Know	Did Not Respond
a) Fewer students moved into county due to the perception of hurricane risk	1 3.6%	3 10.7%	6 21.4%	9 32.1%	5 17.9%	3 10.7%	1 3.6%
b) More students moved out of the county due to perception of hurricane risk	0 0.0%	2 7.1%	8 28.6%	5 17.9%	7 25.0%	5 17.9%	1 3.6%
c) Private schools and home schooling enrolled a larger share of the school-age population	1 3.6%	1 3.6%	4 14.3%	11 39.3%	10 35.7%	1 3.6%	0 0.0%
d) Fewer students moved into county due to lack of affordable housing	9 32.1%	8 28.6%	6 21.4%	1 3.6%	2 7.1%	1 3.6%	1 3.6%
e) More students moved out of the county due to lack of affordable housing	8 28.6%	6 21.4%	3 10.7%	5 17.9%	3 10.7%	2 7.1%	1 3.6%
f) Fewer students moved into the county from a foreign country (foreign countries do not include Puerto Rico or US territories)	1 3.6%	0 0.0%	3 10.7%	4 14.3%	11 39.3%	8 28.6%	1 3.6%
g) There is a lack of jobs in county	2 7.1%	2 7.1%	7 25.0%	3 10.7%	12 42.9%	2 7.1%	0 0.0%
h) More students left school before graduation to enter adult education or GED options	0 0.0%	0 0.0%	2 7.1%	8 28.6%	14 50.0%	4 14.3%	0 0.0%
i) More students left school before graduation and did not continue their education	0 0.0%	0 0.0%	3 10.7%	6 21.4%	17 60.7%	2 7.1%	0 0.0%
j) Trends did not change; forecasting process is to blame	2 7.1%	1 3.6%	4 14.3%	0 0.0%	17 60.7%	3 10.7%	1 3.6%
k) Other (please specify) Charter Schools Loss of Housing / Temporary Migration Due to Hurricanes Windstorm Rate Increases Condo Conversions Investment / 2 <sup>nd</sup> Home Market							

Respondents were asked to: Please explain the factors that you indicated above as either having “**Significantly**” or “**Greatly**” affected the lower than expected student enrollment.

**Setting:**

- Home school, private school, or virtual school - 3
- No Child Left Behind - 1
- Perception of schools that are not meeting state standards - 1

**Housing:**

- Affordability of housing – 7
  - low salaries
  - conversions
  - windstorm insurance
  - flipping
  - new residents (grown kids or wealthy without kids)
- Increased rent due to excessive property insurance premium increases and lack of homestead exemptions - 1

**Jobs:**

- Lack of jobs - no growth (most jobs are prison or government related) - 1
- Rural area has limited opportunity for employment and housing - 1

**Hurricane:**

- Fear of hurricanes - 1
- Fewer jobs due to damage from hurricanes - 1
- Enrollment was increased due to temporary relocation of students due to 2004-05 hurricanes – 1

**For those that responded “Yes” in Question 1 above:**

3. Do you think any of the reasons for lower anticipated enrollment in 2005-06 will persist into the 2006-07 school year?

Yes	No	Don't Know
21	5	2
75.0%	17.9%	7.1%

**Please explain:**

**Setting:**

- Private schools and McKay scholarships continue to increase - 1

**Projections:**

- Growth appears to be lower than anticipated - 4
- Will be close to 2006-2007 projections - 1
- Models not providing good data due to changing trends - 1
- Enrollment declined between 2005 and 2006 for students (K-12), the first decline since 1971 - 1

**Housing:**

- High home prices - 2
- Availability and cost of insurance - 2
- High property taxes - 1
- Affordable housing has only been intensified by loss of housing from Hurricane Wilma - 1
- Salaries are not high enough to support the high housing prices - 1
- Affordable housing will be a major deterrent for attracting new students - 1
- Rising cost of living for energy & transportation - 1

**Employment:**

- Lack of industry jobs - 1
- Slower job growth - 1

**Economy:**

- Saturated housing market with a directional change in the economy - 1

**Demographics:**

- The declining birth rate is expected to continue - 1

**For those that responded “Yes” in Question 1 and that answered “Significantly” or “Greatly” in Question “2d” or Question “2e”:**

4. Please indicate the extent that the factors below influence affordable housing in your school district.

Factor	Significantly (1)	Greatly (2)	Moderately (3)	Marginally (4)	Not At All (5)	Don't Know
a) High housing prices	14 82.4%	3 17.6%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
b) Low wages	4 23.5%	5 29.4%	4 23.5%	3 17.6%	0 0.0%	1 5.9%
c) High property taxes	8 47.1%	1 5.9%	5 29.4%	3 17.6%	0 0.0%	0 0.0%
d) High insurance premiums	10 58.8%	4 23.5%	3 17.6%	0 0.0%	0 0.0%	0 0.0%
e) Lack of available land	3 17.6%	5 29.4%	1 5.9%	1 5.9%	6 35.3%	1 5.9%
f) Transportation issues	0 0.0%	1 5.9%	5 29.4%	4 23.5%	4 23.5%	3 17.6%
g) Other (please specify) Rental Properties Converting to Condos Price of Gas Publicity Associated with Past Hurricanes						

5. Has a lack of affordable housing affected your district’s ability to **recruit** teachers?

Yes	No	Don't Know
34 54.8%	26 41.9%	2 3.2%

*Please explain:*

**Housing / Salaries:**

- Teachers live in neighboring counties where housing is more affordable or starting teachers are sharing apartments / condos - 2
- Lack of affordable housing and low salaries - 1
- Few rentals units available due to condo conversions - 1
- Spike in property values, insurance premiums, and rental fees - 1
- Hurricanes created a shortage of housing - 1
- Limited number of housing for rent - 1
- Adequate affordable housing is available - 1
- Worked with builders and lenders to arrange special financing and affordable housing - 1
- This is a topic for discussion with teacher’s union and administration – 1

**Economy:**

- High fuel prices limit commuting distance - 1

6. Has a lack of affordable housing affected your district’s ability to **retain** teachers?

Yes	No	Don't Know
25 40.3%	29 46.8%	8 12.9%

*Please explain:*

**Housing:**

- Older staff mortgage premiums not affected - 1
- Added a new line item to track the reason for departures in the future - 1
- Cost of property taxes and property insurance -1

**Salaries:**

- Teachers moving to other districts with higher salaries - 1

7. Does the property tax system as currently administered in Florida provide a stable and reliable revenue source for funding your school district's operations?

Yes	No	Don't Know	Did Not Respond
44	16	0	2
71.0	25.8%	0.0%	3.2%

a) **For those that answered "No" in Question 7**, are there changes to the property tax system that would make it a more stable and reliable revenue source for funding your school district's operations?

Yes	No	Don't Know
9	1	6
56.3%	6.3%	37.5%

*Please explain:*

*Other taxes:*

- Tax timber companies - 1
- Everyone needs to pay a certain level of taxes - 1
- Possibly taxing mobile homes as "real property" or increasing tag fees - 1
- Too much reliance on sales tax dollars at state level - 1
- Increases and decreases in state revenue increase the unreliability of funding for education - 1
- Do not roll back the millage rate each year - 1
- Eliminate second home deduction - 1
- Allow 2 mill to float to cover cost of property insurance thus keeping money in operating fund - 1
- Millage for capital outlay does not generate enough funds for the replacement of old schools built in the 30s and 40s - 1

*Homestead:*

- Change homestead exemption - 2
  - Tax the first \$25,000 and exempt the second \$25,000 for homestead exemption

*Finances:*

- TANS loan is needed because so much of revenue is received in December

8. Is the "Save Our Homes" assessment differential affecting your school district?

Yes	No	Don't Know	Did Not Respond
20	15	25	2
32.3%	24.2%	40.3	3.2%

*Please explain:*

*Most of the responses summarized the impact of limiting the tax base due to "Save Our Homes" and stated to what degree this might or might not be an impact on education in their county.*

## Appendix C4 - Local Government Officials

*Responses received from 18.2% or 86 out of 472 possible respondents*

1. Is the property tax burden in Florida shared equitably

a) among **all property owners**?

Yes	No	Don't Know
12 16.0%	60 80.0%	3 4.0%

Please explain:

- *SOH has created inequity - 30*
- *Exemptions create inequity - 13*
- *Non-residential has an increased burden - 11*
- *Property Appraiser has too much discretion - 1*
- *SOH should be portable - 1*
- *There is no reasonable expectation of equity in the existing structure - 1*

b) among all owners of **homestead** property?

Yes	No	Don't Know
23 31.1%	48 64.9%	3 4.1%

Please explain:

- *Not equitable because of SOH - 29*
- *Not equitable because of exemptions - 5*
- *Apply homestead exemption to value after predetermined amount (\$25,000 - \$50,000) - 1*
- *Not equitable because of property appraiser discretion - 1*
- *There is no reasonable expectation of equity in the present system - 1*
- *Timing and location create inequities - 1*

c) among all owners of **non-homestead residential** property?

Yes	No	Don't Know
40 51.9%	31 40.3%	6 7.8%

Please explain:

- *Residential non-homesteaders (and indirectly renters) pay an unfair burden - 9*
- *Not equitable because of SOH - 6*
- *Not equitable because of exemptions - 3*
- *Concept of highest and best use in appraising creates inequities - 2*
- *Not equitable because of property appraiser discretion - 2*
- *There is no reasonable expectation of equity in the present system - 1*
- *Timing (market swings) creates inequities - 1*
- *Vacant properties pay disproportionate share - 1*

d) among all owners of **nonresidential** property?

Yes	No	Don't Know
36 48.6%	34 45.9%	4 5.4%

Please explain:

- *Concept of highest and best use in appraising creates inequities - 4*
- *Not equitable because of SOH - 4*
- *Not equitable because of exemptions - 3*
- *Not equitable because of property appraiser discretion - 1*

- *There is no reasonable expectation of equity in the present system - 1*
- *Timing (market swings) create inequities - 1*
- *Residential non-homesteaders (and indirectly renters) pay an unfair burden - 1*

If you answered **No** to any of the above questions, what alternatives or improvements would you recommend that would result in a more equitable distribution of the tax burden?

- *Eliminate/cap/limit SOH - 23*
- *Apply homestead exemption to value after predetermined amount (\$25,000 -\$50,000) - 9*
- *Eliminate exemption(s) - 6*
- *Increase homestead exemption - 6*
- *Implement additional revenue source(s) - 5*
- *Eliminate property appraiser discretion - 3*
- *Institute SOH cap and exemptions for commercial properties - 2*
- *Index properties - 2*
- *Implement portability - 2*
- *Multiple modifications to existing structure - 2*
- *Assess equally, except for commercial - 1*
- *Use market based system - 1*
- *Revise restrictions on re-evaluation of homestead - 1*
- *Institute flat rate - 1*

2. Does the property tax system as currently administered in Florida provide a stable and reliable revenue source for funding your city's or county's operations?

Yes	No	Don't Know
56	12	3
78.9%	16.9%	4.2%

b) Are there changes to the property tax system that would make it a more stable and reliable revenue source for funding your city's or county's operations?

Yes	No	Don't Know
10	1	4
66.7%	6.7%	26.7%

Please explain:

- *Eliminate SOH - 3*
- *Revamp TRIM notice - 1*
- *Eliminate rollback - 1*
- *Tax all property on fair market value - 1*
- *Implement indexing - 1*
- *Implement additional revenue source(s) - 1*
- *Revise timing of TRIM/assessment process - 1*

3. To what extent do the requirements of the Florida property tax system facilitate taxpayer compliance?

Greatly	Somewhat	Not at All	Don't Know
29	16	0	21
43.9%	24.2%	0.0%	31.8%

Please explain:

- *People are registering multiple homesteads (cheating) - 5*
- *Revise process to get taxes from new properties sooner - 1*
- *Taxpayers have too long to pay - 1*

4. Is the “**Save Our Homes**” assessment differential affecting your city or county?

Yes	No	Don't Know
44	12	0
78.6%	21.4%	0.0%

Please explain:

- *Rapid growth of high value new properties offsets effects of SOH and exemptions - 3*

5. To what extent do property taxes influence decisions of residential property **buyers** in Florida?

Greatly	Somewhat	Not at All	Don't Know
26	28	0	13
38.8%	41.8%	0.0%	19.4%

Please explain:

- *Property owners will stay in existing homestead properties longer - 1*
- *Impacts affordable housing - 1*

6. Do Florida property taxes have an impact on the purchase of **second homes** for use as vacation homes or rental properties?

Yes	No	Don't Know
46	11	0
80.7%	19.3%	0.0%

Please explain:

- *According to realtors, it is the decrease in second home purchases that is currently adversely affecting the housing market - 1*
- *Taxes are not a major concern for purchasers of second homes - 1*
- *Insurance is a more significant concern - 1*

7. Does the “**Save Our Homes**” assessment differential significantly encourage an individual with homestead property to stay in their home rather than buy another home in Florida?

Yes	No	Don't Know
46	4	0
92.0%	8.0%	0.0%

Please explain:

- *Because will lose SOH differential/pay higher price for new home so many will not downsize or upsize - 28*
- *Not a consideration or downsizing and lower costs will offset increase in taxes - 3*

8. What alternatives to the Florida property tax system would you recommend?

- *Provide additional revenue sources (general or specific) - 11*
- *Eliminate or limit SOH - 6*
- *Implement portability - 5*
- *Reduce or eliminate one or all exemptions - 4*
- *Increase homestead exemption - 3*
- *Assess all property at market rate or same rate - 3*
- *Cap assessments or eliminate property taxes - 3*
- *Apply homestead exemption to value after predetermined amount (\$25,000 -\$50,000) - 2*
- *Fund schools from state revenue sources - 1*
- *Don't implement portability - 1*
- *Index parcels to most recent sale - 1*

- Control local government spending - 1
- Allow limited portability - 1
- Need to do something about property tax structure - 1
- Eliminate highest and best use requirement for assessments - 1
- Implement multi-year moving averages on assessments increasing as years in home increase - 1
- Eliminate taxing authority 10 mil cap - 1
- Change special benefit requirement for special assessments from “to property” to personal health, safety & welfare - 1

9. What is the primary purpose of the **Truth in Millage (TRIM)** process (Chapter 200, F.S.)?

*Responses were varied and wide-ranging, and could not be grouped. Local Government Officials do not share a consistent vision of the primary purpose of TRIM in Florida.*

10. Is **TRIM** achieving its purpose?

Yes	No	Don't Know
24	26	14
37.5%	40.6%	21.9%

Please explain:

- TRIM notice is confusing, hard to understand or provides too much information - 27
- TRIM doesn't provide the right kind of information regarding taxes and budgets - 11

11. Is the **Notice of Proposed Property Taxes** (TRIM notice) effective in communicating to taxpayers relevant information concerning their property assessment, their proposed taxes, and the taxing authority's proposed budget?

Yes	No	Don't Know
32	32	8
44.4%	44.4%	11.1%

Please explain:

- TRIM notice is confusing, hard to understand or provides too much information - 16
- TRIM doesn't provide the right kind of information regarding taxes and budgets - 5

12. Please list any suggestions for how the **Notice of Proposed Property Taxes** (TRIM notice) could be changed to increase its effectiveness?

- Eliminate altogether or simplify TRIM process/notice format - 12
- Provide more written explanation or different written explanation - 11
- Cease use of roll back rate - 3
- Eliminate TRIM requirement to advertise in newspaper - 3
- Eliminate SOH - 3
- Should highlight changes more or show what rate would be allowing for inflation - 3
- Modify timing of TRIM process - 3
- Revise roll back rate - 2
- More clearly identify property appraiser and taxing authority phone numbers - 1
- Have TRIM apply to general fund only and not enterprise or special revenue funds - 1
- Show impact of SOH - 1
- Improve cover letter - 1
- Include column for non-homestead properties informing what taxes would be if homestead were applied - 1
- Modify to explain the differing rolls of the tax collector and property appraiser - 1

13. Please feel free to mention any additional issues related to the property tax structure in Florida that should be considered by the Legislature.

- *Expand tax base relying more on consumptive uses or other non-property taxes - 3*
- *Should be revamped to provide relief to homeowners and include other sources - 2*
- *Reduce or eliminate taxes on businesses/small businesses - 2*
- *Eliminate SOH - 2*
- *Should provide equal treatment except where there is special need - 1*
- *Eliminate exemptions - 1*
- *Cease legislating mandates to local governments - 1*
- *Find another source for funding schools - 1*
- *Establish cap for non-homestead properties - 1*
- *First increment of taxable value (\$10,000 - \$25,000) should not be subject to Homestead exemption - 1*
- *Implement portability - 3*
- *Should revamp structure to be more fair - 1*
- *Do not increase exemptions - 1*
- *Remove 10 mil cap - 1*
- *Simplify tax structure - 1*
- *Eliminate use of "greenbelt" by non-farm property owners to avoid taxes - 1*
- *Eliminate elected Property Appraisers - 1*
- *Control local government spending - 1*
- *Eliminate disincentives to improve real property - 1*
- *Reassess all Florida real estate to eliminate inflated assessments - 1*
- *Challenge constitutionality of SOH and homestead exemption - 1*
- *Increase use of non-ad valorem assessments - 1*
- *Modify TRIM to allow local increases consistent with the rate of inflation not to be considered increases - 1*