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THE FALSE PROMISE OF HOMEOWNER TAX RELIEF

DAVID W. WILCOX

I. INTRODUCTION

The homestead tax exemption first appeared in the Florida Constitution more than forty years ago. In 1933, the legislature proposed creating such an exemption by constitutional amendment. This proposed amendment was adopted by the voters the following year.1 The exemption was included in the constitution to give constitutional authority for a $5000 homeowner’s ad valorem tax exemption.

To the average homeowner in the 1930’s, this amounted to total relief from ad valorem taxation.2 The homestead exemption originally included in article X of the 1885 constitution was limited to protection of homesteads from forced sale when the owner was unable to pay his debts. Article X was therefore the logical place for the ad valorem tax exemption, given its underlying purpose: protection from the loss of one’s home.3

In view of the depression of the early 1930’s, it is not surprising that the 1933 Florida Legislature chose to recommend a homestead exemption as a constitutional amendment. If the legislators had not provided for some sort of relief to homeowners, the homes of thousands of families would have been sold on the courthouse steps for delinquent taxes.4 The natural aversion to foreclosures and the subsequent economic losses inherent in such measures inspired the legislature to protect Florida homeowners.5

Though this constitutional amendment was couched in terms of tax relief, the immediate outcome was tax exclusion. The $5000 exemption was large enough at that time to cover almost all the value of the average home.6 For example, in Pinellas County in 1945

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1. Fla. HJR 20 (1933), adopted at general election, 1934, as amended by Fla. SJR 21 (1937), adopted at general election, 1938 (current version at FLA. CONST. art. VII, § 6(a)).
2. R. Schultz, Report by the Pinellas County Property Appraiser 1 (1977) (study and report on homestead exemption in Pinellas County).
3. A forced sale for nonpayment of taxes is not covered by the exemption in article X. It was, therefore, necessary to provide relief from tax liability in order to keep thousands of Florida homeowners from losing their homes as a result of tax sales. Allowing the state’s families to maintain their homes was apparently seen as a more pressing need than was tax revenue during the 30’s.
5. FLA. CONST. of 1885, art. X, § 7 (1938) (current version at FLA. CONST. art. VII, § 6(a)).

During the depression years of the 1930’s the concept of homestead exemption from
(more than ten years after the exemption had been added), over 77% of all owner-occupied homes were still totally exempt from ad valorem taxation. But by 1976, inflation and appreciation of property values had reduced the number of Pinellas County’s exempt homes to almost zero. Thus, since its inception in 1934, the value of the homestead exemption has diminished to the point where it no longer fulfills its intended purpose of exempting owner-occupied homes from ad valorem taxes.

Restoration of the exemption to its previous economic value would be financially unmanageable. A total revision of Florida’s tax system would be required. Florida would have to shift its tax base away from its present orientation toward ad valorem taxation to some other system for obtaining needed funds. Just to restore the homestead exemption to its 1972 value, for example, would require raising the exemption from $5000 to over $8300. The cost of such an increase, in terms of revenue loss to local taxing authorities, would be approximately $140 million.

The interest of Florida citizens in tax relief has been stimulated by California’s Proposition 13. Florida taxpayers, however, bear much less of a tax burden than their counterparts on the West Coast. Florida’s tax structure is substantially different from that of California. The percentage of California’s tax revenues generated by property taxes in 1977 was almost 50% greater than that in Florida. In addition, 29% of California’s tax revenues come from a personal income tax. Florida residents are charged no state income tax at all. In fact, the Florida Constitution forbids the imposition of a state personal income tax. Moreover, some of the features of Prop-

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property tax became popular among homeowners, who saw taxes levied against penniless owners who were losing their homes through tax sales. Florida placed in the Constitution an exemption up to $5,000 for every homeowner. A few other states did the same thing, but usually not for as large an amount. At the valuations of those years, the result was complete exemption for many homeowners.

Id. 7. R. Schultz, supra note 2, at 1. Pinellas County is the most urban county in the state and is, therefore, a good example for statistical comparison, as it reflects the probable future of other areas.

8. Id. The $5,000 exemption in 1945 exempted from ad valorem taxes 77.9% of owner-occupied homes. By 1956 this figure had decreased to 46% and, by 1965, to 11.66%. "By 1976 the just value of virtually all residential properties exceeded five-thousand dollars." Id.


10. Id.


12. Id.

osition 13 are already built into Florida’s tax structure. For example, maximum assessment limits are imposed by the Florida Constitution, and the state’s truth-in-taxing statute requires disclosure to the taxpayers prior to consideration of property tax increases.

Quite simply, Florida taxpayers do not pay as much in taxes as do the citizens of California—not to mention the citizens of most other states. Generally speaking, state and local taxes in Florida are relatively low. For example, in 1973-74 Florida ranked 29th in the nation in per capita state and local taxes. California ranked fourth. In 1977, Florida ranked 47th in the percentage of personal income spent on state and local taxes. California residents were spending an average of $762 each on state and local taxes. Florida residents were spending $520. California has now moved up to “second in the nation in total state and local taxes per person.” California residents now pay a yearly average of $869 each, an increase of more than $100 in four years, while taxpayers in Florida still pay only about $521. Thus, Californians pay 30% more than the national average of $664 for total state and local taxes. In contrast, Floridians are taxed at 20% less than the national figure—and almost two-thirds less than Californians.

Even so, some changes are needed. Property appreciation and the effects of inflation are gradually pushing Florida into a situation not unlike that of the 1930’s. Property taxes, especially for those persons with fixed incomes, are becoming more and more burdensome. Some homeowners are even beginning to fear they will be taxed out of their homes. Columnist Charles Whited cites one such example: “This week I talked with a disabled South Dade woman . . . who fears that any increase in taxes on her tiny, one-bedroom home will outstrip her ability to pay, and she’ll lose it. ‘For people like myself, there’s not a dollar to spare.’”

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This note focuses on the possibility of homeowner tax relief through a discussion and analysis of the Constitution Revision Commission’s proposal to revise the existing homestead exemption. Additionally, this note considers other forms of possible but rejected relief along with the various reasons, both practical and political, why the commission did not select them. The considerations for and the ramifications of the placement of the homestead exemption revision on the November ballot will be examined. Finally, the note concludes with a summary of the proposed revision and a brief discussion of both the benefits and the costs of the revision to the homeowner, as well as the reasons why some have chosen to describe the proposed revision as a “fraud” and a “lie.”

II. Revision Language

The existing homestead ad valorem tax exemption is found in article VII, section 6. Three subsections define and limit the present homestead exemption. The original exemption of the first $5000 of valuation for the holder of legal or equitable title is in subsection (a). The 1968 expansion of the exemption to $10,000 for those permanently disabled and those aged sixty-five or older appears in subsection (c). Subsection (b) limits the dollar amounts in subsections (a) and (c) to one per family unit and restricts the exemption from exceeding the value of the property.

The proposed revision to the homestead exemption of article VII, section 6 would change no language in the present constitution. Instead, the proposed revision would add an entirely new subsection (d). The new subsection would provide:

(d) By general law, the amount of any exemption provided for in this section may be annually adjusted to maintain the constant value of the exemption in the base year of 1979. Such adjustment shall be made only after provision has been made for restitution to the respective taxing authorities for revenue lost by such adjustment.

This new subsection originated as a proposal by Commissioner John Ware. Originally, it included an indexed adjustment of the homestead exemption to compensate for the effect of inflation from

23. The exemption was originally located in art. X, § 7 of the 1885 constitution. It was transferred to art. VII, § 6 in the 1968 revision. 26A Fla. Stat. Ann. 113 (Harrison 1977) (history note to art. VII, § 6).
the base year of 1978. Commissioner Robert Shevin offered an amendment to the proposal to remove the words “index” and “inflation” and to delete the specific base year. The Shevin amendment provided that the exemption would be adjusted “so as to maintain the constant value of the exemption in a base year.” The purpose of Commissioner Shevin’s amendment was twofold. First, he wanted to remove the term “index,” which he thought merely confused the adjustment concept. Second, he sought to delete the specific year of 1978. Shevin wanted to leave the selection of the particular base year to the legislature. The legislature would then have the option of granting relief for past as well as future inflation. The Shevin amendment, leaving the base year unspecified, later prompted Commissioner Jan Platt, a member of the Tampa City Council, to add a clause requiring restitution to local government for revenue lost as a result of the adjustment.

The Shevin amendment and the entire proposal failed when first introduced. Two days later, though, the proposal received a vote to reconsider and was again debated by the full commission. This time, however, after the addition of both the Shevin and Platt amendments, the proposal passed. The only subsequent changes were the addition of a base year of 1979 and some slight technical changes by the Style and Drafting Committee.


26. Transcript of Fla. C.R.C. proceedings 92 (Jan. 26, 1978). Commissioner Shevin introduced an amendment to Proposal 198 which would have added the following language: “By general law the amount of any exemption provided for in this section may be annually adjusted so as to maintain the constant value of the exemption in the base year.” Id.

27. Transcript of Fla. C.R.C. proceedings 77 (Jan. 24, 1978) (remarks by Commissioner Shevin). Commissioner Shevin was apparently disturbed that there was no indication as to what factors would be used to compute the index.

28. Id.

29. Transcript of Fla. C.R.C. proceedings 104 (Jan. 26, 1978) (introduction of Shevin amendment). After the Shevin amendment was adopted, Commissioner Platt, “concerned about the impact of additional exemptions to [sic] local government,” introduced a further amendment to Proposal 198 to include a restitution clause which would allow adjustment of the homestead exemption “only after provision has been made for restitution to the respective authorities for revenue lost by reason of such adjustment.” Id. The motivation behind adding a restitution clause was to provide protection to local taxing units from a decrease in current revenues should the legislature select a base year earlier than 1978. Id. at 105 (remarks of Commissioner Burkholz).


31. Transcript of Fla. C.R.C. proceedings 103 (Jan. 26, 1978) (Shevin amendment adopted); id. at 107 (Platt amendment adopted); id. at 114 (Proposal 198 adopted as amended, 24-13).

32. 1 Transcript of Fla. C.R.C. proceedings 74 (Mar. 8, 1978).

33. Fla. C.R.C., Comm. on Style and Drafting, Report to the Florida Constitution Revi-
The new subsection would be a discretionary one, as are most of the revision proposals which pertain to finance and taxation—except for the business proposals. The legislature would be given authority to implement the proposal, but there would be no mandate for the legislature to do so. Even if the voters approve the proposal in November, the legislature will not be bound to act on it.

One might assume that the legislature would follow the apparent desires of the people and implement the new subsection as quickly as possible. However, it took the legislature six years to implement totally the changes made in the 1968 revision. Eventually, though, the legislature acted as fully as possible to give disabled homeowners and those age sixty-five or older the maximum benefit of the new exemption.

The proposed subsection (d) is distinct from the earlier discretionary increases in one important way: the new exemption provision contains a restitution clause. Thus, before the legislature could implement the proposal, it would have to provide for repayment to local authorities of any revenue loss resulting from the adjustment. The restitution clause would be a significant impediment to any attempt by the legislature to act on the proposal. Although voter/taxpayer pressure might overcome any real legislative hesitancy, the legislature conceivably could decide that the restitution clause made the provision too costly and refuse to enact implementing legislation.

If the commission proposal is approved in November, legislators may well find themselves in the unenviable position of being pressured by their constituents to implement the exemption, while at the same time being forced to raise other unpopular taxes in order to reimburse local governments for revenue losses. However, the homeowner bloc, outnumbering renters by two to one, can be expected to favor the exemption and push for its implementation. In fact, homeowners would be the only ones to gain from the increased exemption, while the burden of restitution would be spread among

35. Ch. 74-264, § 1, 1974 Fla. Laws 711 (current version at FLA. STAT. § 196.031(3)(9) (1977)).
36. SENATE COMM. ON FINANCE, TAX & CLAIMS, ALTERNATIVE FORMS OF PROPERTY TAX RELIEF 26 (rev. ed. 1977) (Table 8) [hereinafter cited as ALT. FORMS OF PROP. TAX RELIEF].
everyone. The legislature would probably respond to the large homeowner segment and require renters and others to subsidize the new exemption.37

III. ADJUSTING THE EXEMPTION: INDEXING

The most interesting and novel aspect of the proposed homestead exemption revision is the inclusion of adjustment indexing.38 This is not the first time indexing for homestead exemption has been attempted in Florida,39 but it is the first attempt to introduce this concept into Florida's constitution. Until now, changes in the homestead exemption have been increases in the maximum limit of the exemption.40

Though the application of indexing to homestead exemption is a recent development, the use of such indexes is not new. For example, the Consumer Price Index (CPI), the most familiar index, has been in use for more than thirty years.41 The CPI reflects the consumer's current buying power. An increase in the index essentially means that the consumer can currently buy less with his dollar than he could before the impact of inflation. The CPI is not, however, the only index currently in use. The Bureau of Labor Statistics computes and publishes a variety of indexes. Some reflect fluctuations in the price of thousands of commodities. Others reflect the price variations of only a few goods.42

37. The funds to support this homeowner subsidy will come from a variety of sources such as tourists and sales tax proceeds. Renters will also be required to shoulder a significant part of the burden—even more than they already do. Id.

38. Indexing, for the purposes of this revision, is the use of a number to represent a relative change in value caused by inflation. This index number would be used to adjust the existing homestead exemption to compensate for the impact of inflation on the exemption. The net result is, in theory, that due to the adjustment, the existing value of the exemption at the base year would be maintained from year to year.

39. Representative Tom Moore, a Democrat from Pinellas County, sponsored bills which would have maintained the homestead exemption at a fixed value by the use of cost-of-living adjustments in 1977 and again in 1978. House Bill 668 failed to pass in 1977, and the 1978 bill, House Bill 631, failed due to a lack of general support and to the revision commission's proposal. Representative Moore's bills would have amended §§ 196.031 and 196.202, Florida Statutes (1977), to provide that the value of homestead exemptions and of the $500 exemption for property of widows, blind persons, and permanently disabled persons be adjusted annually to reflect the changing value of the dollar.

40. The 1968 revision to the constitution increased the maximum exemption to $10,000 for persons age 65 or older and for those totally and permanently disabled. Fla. Const. art. VII, § 6(c).

41. A. MURAD, ECONOMICS PRINCIPLES AND PROBLEMS 152 (5th ed. 1970). Prior to 1945, the CPI was called the Cost of Living Index. The name was changed in 1945 to give the index a more accurate title. The CPI does not reflect the actual cost of living change but merely the rise and fall of consumer prices for a specified list of goods theoretically "bought by moderate-income families in large cities." Id.

42. Id.
The price level of all goods is constantly changing. As supply and demand pressures shift, the corresponding price level rises or falls.\textsuperscript{43} For indexing purposes, the amount of fluctuation in the price level is represented by a number which is meaningless by itself. It is only when the number is used over time that it becomes significant. The use of this number within a specified time frame gives a relative change in value. The numbers which represent this relative change are called "index numbers." When these index numbers are used to indicate relative changes in prices, the numbers become relevant. It is this indexed change in prices that has given the familiar CPI meaning and gave the commission the idea of indexing the homestead exemption.

The purpose of indexing the exemption amount is to reflect the inflationary pressures felt by homeowners in recent years. The revision proposal is designed to stop further inflationary erosion of the homestead exemption. The adjustment to the exemption is not intended to counteract the effect of inflation on the home but rather to maintain the value of the exemption itself at the same level it will be in the base year of 1979. Indexing would not provide the homeowner with "any immediate substantial relief" from past decreases in the value of the exemption but would tend to keep the exemption at a constant value by adjustments proportional to increases in inflation.\textsuperscript{44}

It is important to note at this point that the dollar amount of benefit of the adjusted exemption would not change with the value of the property. The exemption adjustment would be calculated exclusively on the basis of the amount of the exemption. The adjusted exemption would not change with property values. Thus, an owner-occupied home with a just value\textsuperscript{45} of $20,000 would receive

\textsuperscript{43} Without going into great detail, Florida real estate offers an excellent example of the workings of these supply and demand pressures. The tremendous population influx in Florida's recent past has pushed the price of property to all-time highs. Demand competition in the real estate market has made it necessary for potential buyers to bid up the price in order to obtain the property they desire.

Even considering the recent high inflation rate, which has also been a major factor in the increased prices, consumer demand may be the more significant reason for higher land values. Notice, for instance, the price levels found in inland Florida. Though the prices are certainly higher than in the past, the price of these inland lands generally has not increased proportionally with the prices in more desirable coastal regions. The major difference is simply that market demand is higher for the coastal property.

\textsuperscript{44} Transcript of Fla. C.R.C. proceedings 95 (Jan. 26, 1978) (remarks of Commissioner Shevin).

\textsuperscript{45} FLA. CONST. art. VII, § 4. The constitution requires that property be assessed at its just value. FLA. STAT. § 193.011 (1977) sets out the eight factors to be taken into consideration to arrive at just value. The factors to be considered are:
the same dollar amount of decreased taxes that the owner of a $100,000 home would receive.

The fact that only the exemption itself would be adjusted allows the use of a convenient formula to calculate the dollar amount of reduced taxes for any homeowner. That formula is: (Exemption) x (Millage) x (Index) = Tax Decrease Due to Adjustment. A homeowner under age sixty-five living in a county where the millage was twenty mills and the adjustment index for 1979 was 10% would compute his tax decrease by plugging the appropriate figures into the formula. Thus his formula would look like this: ($5000) x (.020) x (.10) = $10, and $10 would be the tax decrease. If the owner of the home were age sixty-five or older, the exemption would be $10,000, and the tax reduction would be $20.

The dollar amount computed by this formula represents not a dollar amount decrease from the prior year's tax bill but rather a dollar amount decrease in the increase in the current year's tax bill due to inflation. That is, if the calculation came out to $10, the $10 would represent the impact of inflation on the exemption itself. Quite simply, but for the adjustment, the homeowner's inflated tax bill would be $10 more.

The owner of a $40,000 home in a county with an assessment of twenty mills would pay $700 in taxes for year 1978. If inflation for 1979 is 10%, the home's valuation would increase due to inflation

(1) The present cash value of the property . . .
(2) 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 . . .
(3) The location . . .
(4) The quantity or size of said property;
(5) The cost . . . and the present replacement value of any improvements . . .
(6) The condition . . .
(7) The income . . .
(8) The net proceeds of the sale of the property . . .

"Just valuation" is now equated with the terms "full cash value" or "fair market value" of the property, that is, the amount a willing purchaser would pay to a willing seller with neither under any compulsion to act. 6 Fla. St. U. L. Rev. 165, 166-67 (1978).

46. It is important to understand that only the value of the homestead exemption itself is relevant to these calculations since it is only the exemption itself that is adjusted. Therefore, the value of the property, as long as that value is as great as the total amount of exemptions, has no bearing on the homestead adjustment calculation. Thus, for homeowners under age 65, property value must be at least $5,500, and for those age 65 or older, the property value must be $11,000 to have any impact on the adjustment. It is relevant to note that the special $500 widow's exemption is not part of this section and therefore not available for adjustment. The additional exemption for those age 65 or older and for those blind or totally disabled will be included in any legislative adjustment under this revision. See Fla. Stat. § 196.031(1), (3)(a) (1977).

47. For the purpose of this formula, "exemption" is the amount of homestead exemption in dollars, "millage" is the total millage amount levied by the respective taxing authorities, and "index" is the numerical factor established by the legislature.
to $44,000, and the tax on the 1979 value, at the same millage, would be $780. The indexed adjustment of 10% to the homestead exemption would increase the existing $5000 exemption to $5500, which would decrease the 1979 tax bill to $770. The $10 difference is the net effect of the adjustment: the adjustment reduces the $80 inflationary jump in taxes to $70.48

The previous example used 10% for the index figure. The actual figure would, however, depend on which index is used. The proposed revision does not specifically require use of the CPI or any particular index. The revision’s language leaves selection of the index to the legislature. The index selected would control the amount of relief the homeowner would receive. An adjustment based on an index which is 5% for the year would mean less relief than if the legislature chose an index which, for the same period, reflected a change of 10%.49 The outcome, in terms of tax savings, would be fully double if the index which reflected an inflationary increase of 10% were selected.

The use of indexing reflects a modern approach to homestead exemptions. Modern ideas, unfortunately, are usually not without the accompanying problem of complexity. This would certainly be true when the legislature attempted to select one particular index from the thousands available. The legislature would have to answer a number of pertinent questions before making its final decision. For example: Can an existing index be used? Should the index reflect the inflation rate of the entire United States, or just the southeastern states? Should the index be computed for the state as a whole, or perhaps just for North or South Florida? What about coastal or inland areas? Should Miami’s inflation rate be chosen or that of Two Egg?

The answers to these questions could be found. It is with the attempted selection of just one alternative, however, that the problem would arise. The rivalry among the various sections of the state would probably preclude the choice of a state-based index. The more likely and reasonable prediction is that the legislature would

48. Any decrease would be proportionally more as the individual’s exemption increased. If the homeowner in the example had a $10,000 exemption, his dollar benefit would be $20 instead of $10.

49. For example, given the same figures as in the hypothetical in the text where the tax was 20 mills:

(1) Using an index which reflects inflation at 5%: ($5,000) x (.020) x (.05) = $5 reduction in year’s tax.

(2) Using an index which reflects inflation at 10%: ($5,000) x (.020) x (.10) = $10 reduction in year’s tax.
follow Kentucky's lead and choose a nationally computed figure. This would eliminate many of the potential problems and much of the sectional bias. It would also reduce the expense of the entire program in that the state could take advantage of the greater federal resources currently providing indexing information. This would also eliminate the need for creating an entirely new bureaucracy to collect the requisite data and calculate the index.

IV. RESTITUTION TO LOCAL GOVERNMENTS

The last sentence in the new subsection would require the legislature to restore to local governments any loss of revenue caused by adjustments under the proposal. This requirement precludes any hope that homeowners may have held for relief. The presence of this restoration or restitution clause indicates that the commissioners either failed to understand the proposal or simply decided that there should be no revival of the rapidly disappearing exemption. The former theory is the most plausible. Numerous examples from the debates point out the commissioners' vague understanding of the proposal and its effect.

51. The rationality of selecting and applying a nationally computed index figure to Florida's homestead exemption is supported by the practical impossibility of doing otherwise. Currently, no state agency computes such an index. Nor is there a state-generated figure which is reliably close. The cost (in terms of additional personnel) of producing a reliable index exclusively by and for use in Florida is prohibitive. The administrative as well as capital expenses of creating an agency and field offices to produce such data would push the cost of the program beyond practicality.

Ignoring the practical aspect for a moment, there is a further problem with a state-generated index figure—that of variation in the inflation rate in different areas of the state. It would be difficult to convince a homeowner or legislator from Miami that he should have his homestead exemption adjustment watered down by the lower inflation rates in other, more rural parts of the state.

A nationally computed figure would at least reduce—if not completely eliminate—such sectionally biased attitudes. Kentucky takes advantage of a federally computed figure by basing its biennial homestead exemption adjustment on the cost-of-living index as computed by the U.S. Department of Labor. The Kentucky implementing statute requires a corresponding adjustment to the homestead exemption for every full percent of change in the cost-of-living index. Such a procedure in Florida, whether statutorily based or not, probably would be well received by both the public and the legislature. Memo of Oct. 13, 1977, supra note 4, at 5 n.7.

52. Fla. C.R.C., Proposal 198.
53. See, e.g., Transcript of Fla. C.R.C. proceedings (Jan. 26, 1978) (remarks of Commissioner Ware). "I'm not sure there would be an actual loss generated in real dollars by any implementation of '78 as the base year. Of course, if you go a few years, it might be the legislature's responsibility to take care of that problem." Id. at 97 (remarks of Commissioner Ware). "It's [Proposal 198] to increase the value of the homestead exemption by virtue of some unspecified index for some unspecified value for some unspecified length of time." Id. at 58. (remarks of Commissioner Burkholz).
Even Commissioner Ware, who introduced the original proposal, perhaps missed the basic point and the beauty of the unadulterated version of the proposal—that version which had no restitution clause. The beauty was in the cost impact of the proposal on local government. Since the only dollars local taxing authorities would not have received would have been the windfall dollars generated by the effect of inflation on the homestead exemption, there would have been no loss of current revenues to local authorities. The only monies not received would have been growth dollars or increases in taxes due only to inflationary erosion of the homestead exemption. Local governments would still have been able to tax the amount of increase in property value due to inflation. An illustration may help clarify this point.

Assume, for example, that in 1979 a homeowner had a home with a $20,000 just value, that the tax rate was twenty mills, and that the homestead exemption was $5,000. Assume further that, in 1980, this same home increases in value to $22,000 due to 10% inflation. As the constitution now stands, the homeowner’s exemption in 1980 would remain $5,000, though the value of his house had increased due to inflation. Under the proposed revision, the homeowner’s exemption would be $5,500 due to the adjustment made to compensate for that year’s inflation. Plugging these facts into the tax benefit formula, the effect of the revision can clearly be seen:

1. 1979: ($20,000) - ($5000) = ($15,000) x (.02) = $300 tax
2. 1980: ($22,000) - ($5000) = ($17,000) x (.02) = $340 tax
3. 1980: ($22,000) - ($5500) = ($16,500) x (.02) = $330 tax

Example (1) shows what the tax would be under the current constitution. Example (2), also calculated under the current constitution, shows the increased tax due to one year’s inflation of 10% on the home. Example (3) indicates the smaller increase in the bill with the benefit of an indexed adjustment. The $10 difference between examples (2) and (3) is the windfall that local governments would receive were there no indexed adjustment. Local taxing authorities have been levying, collecting, and spending such inflation-created windfall revenue every year. In other words, local government has been spending the homeowner’s exemption.

It is important to note that restitution to the homeowner for past

54. Even Commissioner Ware fell prey to the misconception that local governments would be losing revenues. Since the homestead exemption would only remain proportionally the same in future years, local taxing units will be receiving proportionally the same in succeeding years as they will receive in 1979. Id. at 97 (remarks of Commissioner Ware).
losses of exemption benefits has never been a part of this proposal. The proposal is prospective only. The adjustment proposed in the homestead exemption would only prevent future inflationary erosion of the exemption itself. Nothing in the subsection would protect owners from increases in property values due to inflation. Nothing would compensate them for past inflation. Moreover, although at first glance the proposal seems to offer some actual relief for the homeowner, if only a small amount, the restitution clause negates even this minor benefit.

The restitution concept was introduced in research done for the commission’s Finance and Taxation Committee. The original proposal (No. 175) would have allowed the legislature to add $10,000 to the present homestead exemption, thereby increasing the exemption to $15,000 for those under age sixty-five and increasing it to $20,000 for those sixty-five or older or totally and permanently disabled. The loss of revenues precipitated by this additional $10,000 exemption would have hurt local governing units severely. Many local governments would not have been able to compensate adequately for the lost revenues, even by going to the maximum millage limits. In order to keep local governments from suffering what could have been a fatal blow, the committee developed the idea of restitution.

Simply put, the restitution clause requires that the legislature restore to local government the same amount of revenue that is lost by any homestead exemption increase. The replacement revenue would come from the general revenue funds of the state. This notion of restitution was viewed as a more practical alternative to the original proposal allowing an additional $10,000 exemption across the board.

55. Proposal 175 would have done this. It provided an additional $10,000 exemption. The $10,000 would have actually been about $1,700 more than necessary to restore the homestead exemption to its 1972 value.

56. The prospective nature of the exemption was intended by the commission as evidenced by Commissioner Burkholz’ statement: “I suggest... that we insert a base year of 1979, which means that we will be dealing prospectively and that we will be providing in the future the indexing of ad valorem taxes to keep up with the cost of inflation.” 1 Transcript of Fla. C.R.C. proceedings 55-56 (Mar. 8, 1978).


58. The committee estimated that an increase in the exemption by $3,500 would cost local taxing authorities about $100 million per year. Transcript of Fla. C.R.C. proceedings 68-69 (Jan. 26, 1978) (remarks by Commissioner Burkholz).


60. The Center for Governmental Responsibility, Memorandum to C.R.C. 8 (Feb. 9, 1978).

61. Transcript of Fla. C.R.C. proceedings 124-31 (Jan. 24, 1978) (remarks of Commission-
As mentioned previously, Senator John Ware, a commissioner from St. Petersburg, introduced what became the nucleus of the final homestead exemption proposal. Ware proposed that the homestead exemption be increased annually by an index figure to compensate for erosion of the exemption due to inflation. The original language of Ware's proposal included a base year of 1978. Also as previously mentioned, Commissioner Shevin offered an amendment to the proposal to delete any reference to a specific base year so as to allow the legislature to choose the base year it thought appropriate.

At this point, and until the vague term "base year" was changed to a specific year, the idea of restitution was valid. The legislature would have been free to choose any base year it desired. Its decision, of course, would have been constrained by economic reality and the potential insolvency of county and municipal governments. Once the base year was specified as 1979, however, the restitution argument lost its validity. But it did not lose its support from a substantial number of commissioners. According to one memorandum presented to the commission, the restitution clause would guarantee that local taxing authorities would continue to enjoy the windfall of "the automatic tax revenue increase . . . as a result of the impact of inflation on the value of the [homestead] exemption . . . ." Furthermore, designation of 1979 as the base year "will produce no loss in revenue and will prevent a revenue increase of about $14 million due to inflation."

The final proposal thus includes a restitution clause which was

62. *Id.* at 62 (remarks of Commissioner Ware).
63. The CPI, with some adjustment for the state and each county, was originally contemplated. Interview with Commissioner John T. Ware in Tallahassee, Florida (Apr. 14, 1978).
66. "[T]he fiscal impact statement indicates that the current proposal could cost, if the base year was set at 1972, $140,000,000." 1 Transcript of Fla. C.R.C. proceedings 72 (Mar. 8, 1978) (remarks of Commissioner Burkholz).
67. *Id.* at 72, 74.
68. L. Andersen, supra note 9, at 3.
69. *Id.* at 4.

The index, with 1979 as the base year, will operate only to prevent a *growth* in revenue resulting from the impact of inflation on the exemption. It is estimated that the index will prevent $14 million increase in local tax revenues in 1980. However, this is not an actual loss, since the real value of collections will not decrease. The revenue increase would have resulted from the tax on the inflated value of the property not accounted for under the present unadjusted homestead exemption.

*Id.*
originally intended to compensate local taxing units for proposed retroactive exemptions (those exemptions providing for a flat increase or for a base year prior to 1978). However, the restitution clause survived despite the solely prospective nature of the relief in the final proposal. The original purpose of the clause was apparently forgotten.

Instead of help for the homeowner, the proposal would merely distribute the burden. All taxpayers, including homeowners, would have to pay more taxes to support this homeowner-oriented subsidy. Homeowners, renters, and other nonproperty owners would be forced to support the increase in the general revenue fund required to cover the restitution expense. Alternate commissioner Charlotte Hubbard summarized the impact of the restitution clause:

[T]he whole purpose for indexing the homestead exemption was to try to make the ad valorem tax a little less regressive. And by adding the provision that the State restitutes [sic] the money lost by local governments from the State tax system, we are giving the people a tax break at the ad valorem tax level than [sic] they are paying to the State through a more regressive tax system to make up for that increased exemption.70

In particular, the plight of renters warrants sympathy. The transfer of the tax burden from ad valorem tax payers to others would strike particularly hard on renters who already pay ad valorem taxes as a portion of their monthly rent.71 Renters, who comprise almost 36% of Florida households72 and are arguably most in need of relief, are thus in the position of not only receiving no relief, but of actually subsidizing the increased exemption for those who own their homes.73 As Commissioner Birchfield put it, "when . . . you increase an exemption based on ownership, you are transferring [the burden of] that amount of money to [renters] who wouldn't be

71. Landlords, of course, pass on to renters the cost of ad valorem taxes by computing it into the rental charge.
72. ALT. FORMS OF PROP. TAX RELIEF, supra note 36. Table 8 shows that the actual figure is 35.7%.

The percentage of renters relative to total households in Florida has increased substantially in recent years. As the state has become more urban, as the price of land and the cost of home construction have increased, and as more and more Floridians have become more mobile, the number and percentage of renting households has increased. Yet no tax relief has been provided specifically for this growing segment of Florida's population.
where they were if they could afford to be where the people are that you are giving an exemption."74

V. OTHER ALTERNATIVES

Residential property tax relief is not confined to Florida. Currently, forty-seven states offer some form of property tax relief. Twenty-three of these states use a homestead exemption similar to Florida's.75 In addition, fourteen states have a "circuit breaker" form of relief,76 and ten states have both the homestead exemption and "circuit breaker" relief.77

It should come as no surprise that commission opted to stay with the homestead exemption. Besides being the most popular nationally, the homestead exemption is a concept with which the commission and the people Florida are familiar. It was far easier for the commission to retain a proven concept than to attempt to sell a new and potentially more complex system to the voters. Unfortunately, this choice means that homeowners can expect no substantial property tax relief this year from constitutional revision.78 The commission offers the homeowners no relief from burdensome past increases in taxes, but rather only an opportunity to maintain the status quo to the extent of the value of the exemption in 1979. As previously mentioned, however, taxes still will increase with the inflation of property values.

The only homestead exemption proposal that received serious consideration, other than the indexing formula finally settled on, was Proposal 175, which would have provided a flat dollar amount increase in the exemption.79 The proposed increase would have been similar to the $10,000 maximum exemption for citizens which was

74. Id. at 86.
75. ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 43-68. The following states utilize strictly homestead exemption relief: Alabama, Alaska, Delaware, Georgia, Hawaii, Kentucky, Louisiana, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. New York, Rhode Island, and Utah provide for exemptions which may be implemented by local option. Id.
76. Id. Those are Arizona, Arkansas, Colorado, Connecticut, Idaho, Kansas, Maine, Michigan, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and Vermont. The District of Columbia also provides for this form of tax relief.
77. Id. Those states are California, Illinois, Indiana, Iowa, Maryland, Minnesota, New Mexico, North Dakota, Oklahoma, and West Virginia.
78. Whether the lack of any substantial property tax relief is good or bad depends, of course, on one's perspective. There can be little doubt that homeowners will prefer the system which will give them the most benefit, while local government will generally not want a system that will erode their revenue base.
added in the 1968 revision. Had the commission adopted this proposal, the relief would have been substantial. The legislature could have restored a significant part of the homestead exemption's deflated value. The restitution clause, also a part of the proposal, would have limited the amount of increase the legislature could have granted, but the political benefits (in terms of enhanced voter sentiment) of a substantial increase would have been too tempting for legislators to resist. They would have found it easy to blame the local taxing authorities for the increased sales taxes required to support the repayments to the local governments for lost revenues.

Although Proposal 175 would have increased the exemption amount and therefore provided more immediate relief, it is nevertheless vulnerable to the same criticisms as the proposed adjusted exemption. First, there really would be no tax relief unless local governments reduced spending and consequently reduced services. As long as the governing units spend money, they must obtain the funds from somewhere. The homeowner will eventually pay anyway, whether by an increase in property valuations or an increase in the millage levy. Second, given the present rate of inflation, relief would be only temporary. The flat increase in the exemption would be quickly eroded.\(^8\) Third, the exemption offers no relief for renters and other nonhomeowners who generally need most\(^8\) and who will end up subsidizing any increase in the present method of exemption. Finally, the proposed exemption would not be responsive to varying income levels. A millionaire homeowner would receive the same exemption as a retired couple living on social security.

An alternative to the homestead exemption which also received some consideration from the commission was the income-sensitive circuit breaker concept. A circuit breaker is a type of property tax relief in which the state establishes a maximum percentage of income which may be assessed for taxes.\(^8\) The circuit breaker works as follows: when the property tax for an individual exceeds a stated percentage of the individual's income, the excessive tax is rebated directly to that individual.\(^8\) The circuit breaker concept, now in use in almost half the states, is a relatively new approach to property tax relief which, so far, has not found acceptance in Florida.\(^8\)

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80. *Id.* at 99, 131. This analysis assumes no constitutional amendment raising the exemption amount.

81. This conclusion of course excludes those persons who are able to buy a home but who find it more convenient to rent.


83. *Id.* at 5.

84. *Id.* In 1977, Governor Reubin Askew's proposed state budget included "$50 million for a circuit breaker program to reduce the excessive burden of property taxes on the poor, the
cuit breaker programs originated mainly for the benefit of senior citizens, but now 25% of the states using this system have no age restrictions.85

The flexibility of the circuit breaker system is evidenced by the number of variations currently in use. Some states establish a certain percentage level of income which may be secured for taxes, and all taxes above that percentage are rebated.86 Other states use percentage levels but set maximum limits of possible rebates.87 Renters receive substantial relief in seventeen of the states using the circuit breaker concept.88 The relief to renters varies from a low of 10% of the monthly rental payment to a high of 25%.89

One other alternative to make tax relief relative to the homeowner's income level would be to stagger the exemption.90 This method would work by totally exempting a home up to a set amount of valuation, then decreasing the percentage of exemption at incremental jumps in property valuation. This method would not correlate directly to the homeowner's income level but could reasonably be expected to afford relief where it is needed most—at lower income levels.91

The circuit breaker and all income-sensitive programs tend to make the property tax system less regressive by taking the home-

elderly, and others on moderate and limited income, including rebates for renters as well as direct tax relief for homeowners." Address by Reubin O'D. Askew, Budget Conference (March 3, 1977) (copy on file in Press Section, Office of the Governor). The Governor explained the need for a circuit breaker in Florida in his address on the opening day of the 1977 legislative session. "In past years," he said,

we have provided homeowners some relief by rolling back property taxes and increasing homestead exemptions for the elderly. But renters, who comprise 35% of all Florida households, receive no exemption and little or no benefit from the rollback even though they pay property taxes indirectly through their rent. [A circuit breaker] would give some direct relief to renters for the first time as well as provide further relief to eligible homeowners. In some cases, rebates could be as much as $250 per year. This program would especially assist the poor and those on fixed and moderate incomes.


85. The District of Columbia and six of the 24 states using circuit breakers have no age restrictions. They are: Maryland, Michigan, New Mexico, Oregon, Vermont, and Wisconsin. ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 70.

86. Those states are Arkansas, Connecticut, Illinois, Kansas, Maine, Maryland, Michigan, Missouri, Nevada, North Dakota, Oklahoma, Vermont, and West Virginia. Id.

87. Id. at 71 n.5.

88. Arizona, Colorado, Connecticut, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, North Dakota, Oregon, Pennsylvania, Vermont, West Virginia, and Wisconsin provide property tax relief to renters. Id. at 70.

89. Colorado, at 10%, is the lowest of the states that grant renter relief, while Arizona, Illinois, Maine, Vermont, and Wisconsin all grant 25% renter relief. Id.


91. ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 104.
owner's ability to pay into consideration when taxing the property. Such programs also extend benefits to renters and nonhomeowners, who currently receive no relief in Florida. This expansion alone would extend relief to an additional 36% of Florida's households.92

Income-sensitive programs, though, are not without their drawbacks. They require a standardized procedure for proving household income.93 More importantly, they require a system to rebate the excessive taxes, which means increased costs of administration. It simply would take more people and more bureaucracy to implement such programs. The costs, however, have not deterred twenty-four other states and the District of Columbia from implementing similar systems.94

Establishing such a system in Florida, however, would require a conversion from the present methods and increased expenses to support the new, more complex system. Those in the higher income brackets probably would balk at the proportionate increased burden, but those in the moderate- to low-income levels would certainly be in favor of such a shift. Given the political realities and the relative powers of influence at both ends of the income spectrum, Florida will likely keep its forty-year-old, non-income-responsive homestead exemption.

Another area of tax relief was suggested as an amendment to Proposal 175 and would have provided relief for the 36% of Florida's households which are renters. This relief was not tied to a circuit breaker proposal. Rather, the amendment would have included rented dwellings within the existing exemption.95 As previously indicated, renters pay ad valorem taxes as a part of every month’s rent check, yet they get no credit for those ad valorem taxes on their federal income taxes as homeowners do. Further, they do not receive the exemption benefit. And there are additional financial rewards accruing to homeowners in which renters do not share.

The tremendous property value increases in the past few years have protected and appreciated homeowners' investments more than they ever expected.96 During this same period, those who have rented, either by choice or because they could not afford to purchase a home, have not participated in the financial appreciation of their

92. Id. at 26 (Table 8).
93. This could be as easy as merely submitting the individual's federal income tax return.
94. ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 43-68. See also notes 76-77 supra.
95. Transcript of Fla. C.R.C. proceedings 100 (Jan. 24, 1978) (amendment by Commissioner Birchfield of Proposal 175 to provide a rebate to renters); ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 26.
96. ALT. FORMS OF PROP. TAX RELIEF, supra note 36, at 94 (Table 1). In the 20 years following 1956, the value of Florida's tax rolls went from $4.5 billion to $97.8 billion. Id.
landlord's property, but have been forced to pay the increase in his property taxes.

Not only have renters been unable to share in Florida's property appreciation, but also they have had to subsidize tax relief to homeowners. Increases in all property taxes necessitated by increasing costs to local governments and by the losses in tax revenue due to homestead exemptions (both the regular exemption and the 1968 increase for older citizens) have caused an increase in monthly rent payments. This tax subsidy will be expanded if the revision commission's proposal passes. The replacement revenues for local government required by the restitution clause would be collected, to a large extent, from the 36% of Florida's households who rent and get no exemptions.

Providing an exemption to renters would not be inexpensive. It would cost $19 million in terms of lost revenue to local governments for every $1,000 exemption. The homestead exemption, however, costs local government $30 million for the same $1,000 increase in exemption. There would be costs in administering the renter exemption, but it is doubtful that those costs would be large enough to affect the $11 million cost difference between homestead and renter programs. Even if a renter proposal were to have a restitution clause for local government losses, such a program still would decrease the inequity inherent in the present system. Renter relief would have been an admirable achievement for the commission, one that would have provided an equitable approach to a modern problem.

The commission additionally had the option of adopting a simple statement giving the legislature broad constitutional authorization to legislate in the area of homestead exemption. This format is a popular one which now has been adopted by sixteen states. Given the flexibility and freedom of such a constitutional provision, the legislature would be free to experiment and attempt to find new methods of tax relief which may better fit the needs of the state. But the revision commission declined to give the legislature such freedom to find new solutions. The commission instead decided to perpetuate the inequities of a system established in the 1930's by giving

97. Id. at 13 (Table 2). A total of 1,040,000 households would benefit from the renter exemption. Id.
98. Id. A total of 1,777,000 homeowners would benefit from such an increase. Id.
99. L. Andersen, supra note 57. The following states have just this type of constitutional flexibility: Alaska, Delaware, Idaho, Illinois, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, and Wisconsin. Id.
homeowners a five- to ten-dollar tax reduction and requiring them to pay it back in another form.

VI. BALLOT PLACEMENT

The November ballot will contain eight separate ballot items which will encompass all eighty-nine proposed changes to the 1968 Florida Constitution. The homestead exemption proposal is in the finance and tax revision, Revision Number Seven. Not only will the homestead exemption revision be the most important of the constitutional changes to most homeowners, but it will also be the hardest to find. The provision for adjustment of the homestead exemption has been placed in the middle of the longest, most complicated revision on the ballot. Indeed, Revision Number Seven is more than twice as long as any other revision ballot package. After reading the proposal thoroughly, though, it will become clear that the burdensome length will be the least of the voter's problems. No less than twelve separate and distinct revisions are contained within the text of the seventh ballot proposal. The voters will only be allowed to cast a single yes or no vote on issues as diverse and complex as bond financing and tax adjustment for solar energy systems.

As if the multitude of revisions is not enough to befuddle the average voter, the commission has assured voter confusion by the convoluted language in which the ballot proposal is framed. Five of the twelve revisions are mandatory revisions. That is, they must be

100. The Finance and Taxation Revision will appear on the ballot as follows:

Proposing a revision of the Florida Constitution to provide that property owned by a municipality and held for municipal purposes shall be exempt from taxation; to extend the personal property tax exemption to all natural persons, and to extend to widowers the property tax exemption of not less than five hundred dollars; to provide for ad valorem tax exemptions for leasehold interests created prior to January 1, 1978 in government owned property; to provide that leasehold interests in government property leased for public purposes in connection with air, water or ground transportation may be exempt from taxation as provided by law; to permit adjustments to tax assessments relating to stock in trade and livestock, historic property and solar energy systems; to permit the revaluation of property every two years; to authorize the use of tax abatement and increment for redevelopment of slum and blighted areas; to provide that corporate income tax may be levied against the appreciation of property value occurring prior to November 2, 1971; to permit an annual adjustment to the homestead exemption to maintain a constant value using 1979 as a base year and providing for replacement of revenues to local governments; to provide that state bonds may be used to finance water facilities and may be combined for sale; to provide that revenue bonds may only be issued for fixed capital outlay projects, to place limitations on revenue bonds and bond anticipation notes issued by local governments; and to provide that revenue bonds may be issued for housing and related facilities.

implemented by the legislature if the revision passes. The seven discretionary revisions, however, may be acted on if the revision receives an affirmative vote. Whether the revisions are mandatory or discretionary is of greater significance than may be initially perceived: the major benefits to Florida's businesses are mandatory, while the homestead exemption is framed in discretionary terms. Passage of Revision Number Seven will mandate that business receive the benefits of the revision, but passage will mean only that the homeowner may or may not be granted an adjusted exemption.

There may be a method to the apparent madness in the inclusion of such diverse issues in Revision Number Seven. The homestead exemption will draw a positive response at the polls, and thus the business revisions probably will be carried by the voters' desire for tax relief. One business tax break which has been combined with the homestead exemption proposal on the ballot would overturn a recent supreme court decision making companies pay corporate profits taxes on property owned before but sold after 1971. Another would exempt certain leaseholds from property taxes if private interests lease them from government.\[101\]

These tax breaks for business would, of course, diminish tax revenue. State and local government would be tempted to make up for this lost revenue by increasing taxes on consumers and homeowners. Commissioner Don Reed summed up the impact of commission's packaging technique: "[I]f you go out to the people with a carrot on the end of this homestead exemption stick and say that we are providing for an additional ten thousand dollars homestead exemption for you, it will pass if it is the only sentence left in the Constitution."\[102\]

Most voters will be frustrated by the complexity of the revision and, therefore, will focus merely on the homestead "carrot." They will overlook the "stick" of unwarranted tax breaks for business. The average voter will go to the poll prepared to vote yes on all of Revision Number Seven simply because it contains the homestead proposal. The rest of that proposed revision will be ignored.

Placing the homestead exemption in the finance and tax revision section seems logical at first. It is when one reads the entire text of

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101. For lengthy discussions of these controversial issues, see Note, Ad Valorem Taxation of Leasehold Interests in Governmentally Owned Property, infra this issue; Note, Defining a Fair Share: The Proposed Revision to Florida's Corporate Profits Tax, supra this issue.

102. Transcript of Fla. C.R.C. proceedings 123 (Jan. 24, 1978). Commissioner Mathews also indicated his awareness of the packaging problem: "I have heard you all talk about the sugarcoated homestead exemption matter being the great marvel piece of candy that's going to attract all of the voters to whatever is tied into it. I don't disagree with that." Transcript of Fla. C.R.C. proceedings 59 (May 5, 1978).
Revision Number Seven that the conflict inherent in the revision becomes clear. The combination of linking exemptions for business with the natural positive voter bias associated with homestead exemption tends to dissolve the superficial logic of the package. It then becomes apparent that placement of the revised homestead exemption within a section primarily concerned with benefits for the commercial sector was a result of political maneuvering. In short, none of this happened by accident.

This appears to be the conclusion of some commission members as well. Chairman Talbot "Sandy" D'Alemberte forthrightly brought the issue to the attention of the entire commission:

I think maybe [the combination of homestead exemption with other proposals] has been overly politicized to some extent. I have a judgment about what's fair and a judgment about what that voter is going to think when the voter goes into that booth. And I want to give you that judgment. And it's a judgment not only of my own, but it's a judgment that I have heard many members of this Commission express over a period of months.

Some time ago, Commissioner Thayer, Commissioner Hollis, Commissioner Birchfield and others . . . indicated to me that they thought that the homestead exemption on the ballot might be used as a device to draw votes for other issues, and that that was not fair.

I think that the homestead will be used as a bait to ask people to swallow some things that are highly controversial. I do not think it would be fair to tie the Cabinet issue with homestead. I don't think it's fair to tie any of the other controversial measures with homestead . . . .103

The issue was further publicized when Governor Reubin Askew and major newspapers and commentators from Pensacola to Miami pushed for separation of the homestead exemption from the rest of Revision Number Seven.104 They argued that the homestead revision would surely pass if it were allowed to stand alone, but the rest of the package would have difficulty obtaining voter support. They

103. Transcript of Fla. C.R.C. proceedings 74-77 (May 5, 1978). It is relevant to note here that the business-oriented revisions are not necessarily inherently bad. It is the combination of the business exemptions with the voter-biased homestead exemption that spurs the negative implications. If the business exemptions are valid, they should be allowed to stand alone. The voter should be allowed to arrive at his or her voting decision uninfluenced by a potential increase in the homestead exemption. Revisions to the document which is the very basis of all our laws should be consciously selected, not carried in on the coattails of a popular issue.

hoped to allow voters the opportunity to support or reject the other proposals in the package without having their reasoning obscured by their ad valorem tax bills. Coincidentally, these bills are payable in most Florida counties beginning in November.

It is thus apparent that the commissioners were neither asleep nor were they duped during the deliberations on this proposal. The reaction of Askew and the press was strong enough to compel the commission to revisit the issue at their final meeting. The separation proposal was reargued and revolted. In the end, it failed. The "carrot" is still tied to the "stick."

The business interests must have rejoiced over the final decision of the commission. That decision may well have assured the passage of Revision Number Seven. Voters will find themselves aligned with big business at the polls. Newspaper ads and bumper stickers sponsored by the business community will no doubt reinforce the homeowners' natural tendency to vote for tax relief. Commissioner Jon Moyle made just this prediction:

I would suggest to you that what you are going to see in every newspaper in a full-page ad, on every TV station, you are going to see this language: "Vote for Article VII. Save your homestead exemption. Increase your homestead exemption. Ad valorem tax relief."

105. 33 Fla. C.R.C. Jour. 585 (May 5, 1978). The vote by the commissioners to separate the homestead exemption from the other revisions in Revision Number Seven failed 18-18. The commissioners in favor of separating homestead were D'Alemberte, Annis, Apthorp, Barron, Clark, Collins, DeGrove, Gromes, Harrison, McCrary, J. Moore, Moyle, Overton, Platt, Polak, N. Reed, Ryals, and Shevin. The commissioners opposed to separating homestead were Ausley, Barkdull, Birchfield, Brantley, Burkholz, Douglass, Gardner, Hollis, James, Kynes, Mathews, Oliva, Plante, D. Reed, Roberts, Spence, Thayer, and Ware.

Some commissioners had notable difficulty in casting their votes on this crucial issue. Among them was Commissioner Shevin, a candidate for Governor, Shevin ultimately voted to separate the homestead exemption from the business tax breaks, but not without some apparent indecision. In an editorial entitled And the Candidate for Governor Passed, the Tampa Tribune commented:

The question was to sever the business tax proposals from the homestead exemption. The voting proceeded, and came to Shevin. "Pass." And so the voting went around the room; the final tally: 18 votes to keep the packaging, 17 votes for separate amendments.

Wait a minute, said Mr. Shevin; he'd like to vote after all. And he did, "Yes" to sever. That made it 18 to 18, still one vote shy of the 19 needed. Why the wait?

Because if Shevin had voted when his turn came he could not know if his vote would be the one needed to separate the tax proposals into the fairest presentation for voters. If it had, that would have made him very unpopular with certain Big Business interests, particularly the influential Associated Industries of Florida, and hurt his race for Governor. Better to have it both ways, Mr. Shevin apparently reasoned. "Voters, I cast my vote for fairness," he can say. Or, "Business, my vote didn't make any difference, did it?"

And that's going to be plastered all over the state of Florida. And none of these other issues in Article VII are going to be mentioned.

And do you know why that's going to happen? Just think about the people who were supporting Article VII; the president of one company in Florida, one of the largest companies in Florida, admitted publicly that his company will benefit three and one-half million dollars from one of the tax relief measures.106

Governor Askew was equally blunt and equally vehement in his reaction to the refusal of the commission to separate the homestead exemption proposal from the other tax proposals on the November ballot:

It is regrettable . . . that the good work of the Commission was overshadowed and considerably discredited at the end by the obvious succumbing to the special interests on the tax provisions.

Is there doubt in anyone's mind now that the top priority in Constitution Revision for the special interests was, from the very beginning, tax breaks for themselves?

Is there doubt in anyone's mind now that the overriding strategy of these special interests in the final days was to tie their proposal for tax breaks with the homestead exemption proposal knowing their tax breaks standing alone will have very little appeal to the people?

It is interesting that so many Commissioners saw the need to pull out many other issues as separate ballot items but were unwilling to do the same on the tax issues that are clearly controversial. I am confident the people will see through all of this charade, and that is exactly what it is. In fact, I am confident that as the people look closely at the homestead exemption they will see that whatever relief it provides may well turn out to be illusory.107

Governor Askew may or may not be correct to have such confidence in the ability of the voters to see through the charade of Revision Number Seven. If not, then the price of voter support and therefore of passage of Revision Number Seven has come at a comparatively low cost. The price of each vote is the minor homestead exemption benefit, if any, to be gained by the homeowner. Given 1979 as a year of average inflation (6 or 7%), and given a voter in a county which levies twenty mills, the price the business interests will have paid for his vote would be a $6 or $7 reduction in the inflationary increase in his property tax.108

108. To compute the actual dollar amount for a particular area of the state, use the formula in text accompanying note 47 supra.
The cost of the homeowner’s vote drops to nearly zero, though, when the increase in other tax sources required by the restitution clause is added to the calculation. Since property owners will have to help make up the lost local revenues, they will find themselves voting for a revision which allows them practically no benefit. The homeowner/voter should also remember that any beneficial homestead exemption adjustment will be at the discretion of the legislature. There would be no constitutional requirement that the legislature implement the exemption proposal at all. The accompanying costs associated with passage of Revision Number Seven allow homeowners little more than a satisfied feeling from their participation in the democratic process. That feeling of satisfaction, however, will disappear should they ever realize how they have been misled.

VII. SUMMARY AND CONCLUSION

Florida’s homestead exemption has been severely devalued by forty-four years of inflation and property appreciation. The tremendous increase in property valuations has occurred while the dollar amount of the homestead exemption has remained constitutionally fixed. As a result, the exemption no longer serves its intended purpose: to protect the homeowner from a forced sale of his residence due to an inability to pay his yearly property taxes.

At best, the homestead exemption presently provides mild relief to homeowners by reducing their ad valorem tax bills. This is a far cry from the total ad valorem tax relief provided by the homestead exemption at its inception. It is becoming more and more difficult for many Florida homeowners, particularly those on fixed incomes, to pay their property taxes. The Constitution Revision Commission’s only response to the plight of these homeowners has been to

109. Transcript of Fla. C.R.C. proceedings 57 (Mar. 8, 1978) (remarks of Commissioner Burkholz). “Of course, if [the State has] to raise the sales tax to make up the revenue, there is no savings.” Id. “When you say that restitution must be made by some other tax source, you’re not giving any relief at all.” Id. at 66-67 (remarks of Commissioner James).

110. Commissioner Polak revealed his misgivings about the somewhat deceptive nature of the final exemption proposal when he made the following remarks while attempting to strike the restitution provision: “If we’re truly going to give this homestead exemption that we’re talking about, let’s tell the people the truth and not tell them that we’re giving them something and then at the same time taking it away.” Id. at 73.

The voters will receive some benefit from their vote. They will, by the passage of Revision Number Seven, gain a deferral of the present yearly increases in their property values. Revision Number Seven will allow the revaluation of property every two years instead of yearly. This will allow deferral of valuation increases for an additional year. At the end of the second year, property would be evaluated and adjusted to reflect any appreciation for the previous two years. The evaluation period revision, as are all but one of the homeowner-biased revisions, is discretionary.

111. See note 20 supra.
propose a new subsection of the constitution which would allow the homestead exemption to maintain a constant value in future years.

Indexing the homestead exemption to offset the effect of inflation is one revision the commissioners could have viewed with pride. The restitution clause, however, added a false bottom to the apparent relief. At first glance, the restitution clause appears to be a fair way to protect the revenue base of local governments. But, on closer inspection, it becomes apparent that no actual loss is being sustained by local governments—only a reduction in the growth of revenue due to inflation.

Each year local governments gather increased revenues as a result of the inflation in property values and the decrease in the value of the exemption with no increase in the tax rate. Maintaining the value of the exemption by an indexing adjustment cuts off this windfall effect as to the exemption value. By allowing the restitution clause to be tacked on to the revision, however, the commissioners have not only reestablished the windfall, but also have guaranteed its payment by the state and ultimately by the people.

The location of the homestead exemption revision on the November ballot adds fuel to the idea that the commissioners had a motive other than tax relief for homeowners. The combination of the business-oriented revisions with the homestead exemption “sweetener” reeks of political influence. The strongest influence for this unlikely combination came from within the commission itself. The small businessman who has supported big business since his election to the Florida Senate, Commissioner Lew Brantley, pushed for and won the deceptive combination of homestead/business exemptions.112

This “bait-and-switch” method of ballot placement will likely succeed. The average voter will probably not take the time necessary to read a revision which is more than twice as long as all the others, or to try and decipher eleven other included revisions besides the homestead exemption. The business/homestead revision did not merely slip by the unwary commissioners. Rather, they have taken the “easy political road” and assisted the eventual passage of the business revisions.113

112. Editorial, Separate the Prune from the Orange, Tampa Tribune, May 1, 1978; Transcript of Fla. C.R.C. proceedings 74 (May 5, 1978) (remarks of Commissioner Brantley). "Commissioner Shevin . . . I think you and Commissioner Polak and perhaps Commissioner Douglass are like an old senator that used to be in the chamber when you were here on the question of no-fault automobile insurance. He said, 'I simply want to do what's right if somebody would tell me what's right.' I think I'm in a position to tell you what's right. Vote no [on the separation issue]." Id.

113. Transcript of Fla. C.R.C. proceedings 122-23 (Jan. 24, 1978) (remarks of Commis-
While making up their minds on how they will vote, homeowners should weigh the benefits of the discretionary homestead exemption against the costs of the mandatory business revisions. The benefits to the homeowner are easy to calculate and would result in a minor $10 to $20 decrease in the inflationary growth of the homeowner's tax bill. The homeowner's exemption adjustment, should the legislature decide to implement it, would at least help maintain the value of the exemption in the future and offset the inflationary erosion experienced in the past.\(^{114}\)

The costs of the revision, however, are more difficult to ascertain. The expense of the homestead exemption, via the restitution clause, is expected to be about $14 million the first year. If inflation and, therefore, the adjustment program continue for an appreciable period, the costs would become proportionately greater.\(^{115}\) Passage of the homestead revision also would carry with it the high costs of the business revisions. Those cost figures, also difficult to calculate, could run into "the hundreds of millions of dollars."\(^{116}\)

Commissioner Bill James perhaps best summed up the entire exemption revision and the underlying issue during the debates the day the proposed revision was approved by the commission:

> When middle America finds out what we have done to them in the State of Florida . . . [that] . . . they are being asked by a fraudulent method to think and vote to sweeten the pot so that some of those on the Commission . . . can get people just trotting out there to vote "yes" by the thousand and, yes, by the hundreds of thousands. That's what the whole idea is behind this [homestead exemption] . . . .

> I think the people of Florida are going to realize it . . . because

\(^{114}\) Transcripts of Fla. C.R.C. proceedings 61 (May 5, 1978).
\(^{115}\) Transcripts of Fla. C.R.C. proceedings 113 (Jan. 26, 1978) (remarks of Commissioner Ware).
\(^{116}\) L. Andersen, supra note 9, at 4.

Miami Herald, May 1, 1978, § A, at 6, col. 1; Tampa Tribune, supra note 112.
. . . I'm going to tell them that that's what it is; that it's a fraud, it's a lie, and it's being put in there only to get the people to pass a document that people fear otherwise may be defeated.

. . . And all of the people are going to see something that doesn't really exist, an additional possibility of an exemption on their homestead.

You ought not to do this."'

Tax-pressed homeowners want some relief—any relief. But what they will get with the passage of Revision Number Seven is a false bottomed and illusory homestead exemption that merely hides the business-oriented treasures below.

Will the voters of Florida take the bait?

117. Transcript of Fla. C.R.C. proceedings 110-11 (Jan. 26, 1978) (remarks of Commissioner James). See generally 1 Transcript of Fla. C.R.C. proceedings 66-67 (Mar. 8, 1978) (remarks of Commissioner James); id. at 70-71 (remarks of Commissioner D. Reed); Transcript of Fla. C.R.C. proceedings 59 (May 5, 1978) (remarks of Commissioner Mathews); id. at 62 (remarks of Alternate Commissioner Hubbard); id. at 69 (remarks of Commissioner Polak). See also 1 Transcript of Fla. C.R.C. proceedings 59 (Mar. 8, 1978) (remarks of Commissioner D. Reed):

It's absolutely silly in my view to expand and perpetuate the kind of fraud on the general public that the homestead exemption does. It doesn't exempt home property. It doesn't give someone a free ride on taxes. They're paying taxes anyhow, because government still operates on dollars; and dollars are still raised by taxes and the taxpayers still pay them.