WHAT DOES THE ATI BILL DO?

H. 3713 would eliminate any increase in taxable value when a property is sold or otherwise undergoes an assessable transfer of interest. H. 3713 is in House Ways & Means Committee. A similar bill, S. 229, would limit increases following an assessable transfer of interest (ATI) to 15%. S. 229 is in Senate Finance Committee.

How the ATI law works now:
If a house (or any other type of property) is sold, an assessable transfer of interest (ATI) has taken place and the property is then placed on the tax rolls at the fair market value (usually the sales price, and therefore the “point of sale” name). The property is at the higher fair market in subsequent years. When the next reassessment is implemented, that property may increase in value only 15%, due to market value increases. The value of any addition is added to whatever the previous tax value is at the time it is added.

Example: A house currently on the tax books for $100,000, sells in a typical transaction for $200,000. The house is then taxed at $200,000 on the next tax bill. At the next reassessment, if the house were appraised at $250,000, the value would be capped with a maximum increase of 15% for a taxable or capped value of $230,000.

How H. 3713 works:
A home is sold in a typical sale. The amount of the transfer value or sales price of the home above the previous owner’s tax value is exempted from property taxation. At the time the next reassessment is implemented, the increase in valuation is capped at a 15% increase over the previous owner’s taxable valuation. H. 3713 is retroactive to 2007, but does not require refunds of taxes already paid.

Example: A house currently on the tax books for $100,000 sells in a typical transaction for $200,000. The house is then taxed at $100,000 on subsequent tax bills until implementation of the next reassessment. At the next reassessment, the house is appraised at $250,000. After reassessment, the tax value would be the previous owner’s value ($100,000) plus the increase in value between the previous taxable value and the current fair market value capped at 15%. This would be $100,000 plus $15,000 (increase over previous taxable value capped at 15% - $15,000) for a new total taxable or capped value of $115,000.

How S. 229 works:
A home is sold in a typical sale. The house is placed on the tax rolls at the previous owner’s value plus 15%, assuming that the sales price is higher than the previous taxable value. At the time the next reassessment is implemented, the increase in valuation is capped at a 15% increase over the purchaser’s taxable valuation.

Example: A house currently on the tax books for $100,000 sells in a typical transaction for $200,000. The house is then taxed at the previous owner’s tax value ($100,000) plus 15% of the increase between the previous tax value and the purchase price ($15,000) for a new value of $115,000 on the next tax bill. At the next reassessment, if the house were appraised at $250,000, the value would be capped with a maximum increase of 15% for a taxable or capped value of $132,250.

WHAT IS THE FISCAL IMPACT OF THESE PROPOSALS?

Previously, the Board of Economic Advisors (BEA) has said the cost of either bill is $44 million lost revenue per tax year affected.

The one year cost in lost revenue from either bill is spread as follows:

	Total	Commercial	Residential	% of total impact
Schools	$19.6 M	$16.5 M	$3.1 M	45%
Counties	$16.1 M	$8.6 M	$7.5 M	37%
Cities	$8.3 M	$4.4 M	$3.9 M	19%
Total	$44 M	$29.5 M	$14.5 M	

Because of the retroactive application of H. 3713, the $44 million per year impact is a little misleading. Under H. 3713 the tax base would generate $220 million less in tax revenue than under current law in the first year. The total revenue loss per year would be $44 million higher each year thereafter. So the impact would actually be:

	FY 11-12	FY 12-13	FY 13-14
H. 3713:	$220 M	$264 M	$308 M
S. 229:	$ 44 M	$ 88 M	$132 M

WHAT IS THE IMPACT ON THE CONSTRUCTION INDUSTRY & NEW INVESTMENT?

Both bills create an unfair tax penalty for anyone building new homes or commercial property such as shopping centers or apartment complexes. New construction is placed on the tax rolls at 100% of its fair market value and is taxed on that value. Any property which has been in existence through one or more reassessments may have gotten the benefit of the 15% cap in value increases and is taxed at only a percentage of the fair market value. Below is a chart which takes historic data from Charleston County and assumes that H. 3713 passed in 1992 and looks at the average percentage of fair market value which is taxable in five different areas of Charleston County after reassessment in 1998 and 2003.

	average % of value taxed				
	N. Chas.	Lincolnville	Mt. Pleasant	Peninsula	Kiawah
1992	100%	100%	100%	100%	100%
1998	100%	100%	73.7%	64.7%	43.7%
2003	74.7%	85%	56.7%	45.2%	31.4%

THESE BILLS WORK AGAINST ECONOMIC DEVELOPMENT

Economic development has two main goals: (1) jobs and (2) a broader tax base.

In the first wave, big economic development projects are given substantial state and local tax breaks and state and local governments provide direct spending to locate these projects in South Carolina. The main benefit is jobs as a result of the incentives granted and direct spending for infrastructure, land, etc....

The second wave of expansion comes from suppliers and support companies for these big projects and they also receive incentives, although typically not at the same level. Again the main benefit is typically jobs, with some broadening of the tax base beginning to appear.

The third wave of benefit is the indirect benefit which comes from the increased payroll and/or better paying jobs that provide wealth to our citizens who spend that income in the community. Increased spending attracts new stores, new restaurants and new housing construction. This wave involves no economic incentives or direct spending by government. The benefit is more weighted in favor of broadening the tax base, but existing shops and service providers may be able to expand the number of their employees or grant pay or benefits increases.

Beneficiaries of the third wave:

Suppliers of construction materials and construction trades - as do realtors, bankers and other professions tied to the transaction.

Existing shop owners and service providers not directly tied to the new industry & suppliers

The third level of economic activity enriches all of us. These investments add to the economy across the board and bring jobs and increased tax base to the entire community without the need for direct incentives. These bills adopt a tax policy which creates a bias against new investment and works directly against the economic benefits we work so hard to achieve.

Recent major economic development projects:

titanium plant - Laurens
transportation hub - Orangeburg
Grant Forest Products - Clarendon & Allendale
Boeing - Charleston

In making those announcements, the multiplier effect of these investments was touted as a huge benefit of the direct investment in getting these facilities to locate in South Carolina. Granting a special tax break to existing housing and commercial stock will create a competitive disadvantage for anyone who wants to invest additional money in commercial or residential property. New investment creates jobs in numerous construction industry trades and supply chains and adds value to the tax base which turning over existing properties cannot match.

THESE BILLS WILL LIKELY AFFECT BOND RATINGS

Moody’s bond rating service placed all school bonds in South Carolina on a negative outlook immediately after Act 388 passed. In discussing the negative impact of the constitutional 15% cap on bond ratings, they cited the ATI mechanism as a positive counterbalance in high turnover districts. There is a risk that county and municipal bonds would be placed in the same position as school bonds if either of these bills were to pass and wipe out most of the revenue growth from the ATI. At the very least, these bills reduce future bond issuing capacity, if it did not result in bond rating downgrades.

THESE BILLS ARE A REVERSE IMPACT FEE

Originally, point of sale valuation was sold as the ultimate impact fee. New residents purchasing either pre-existing or new homes begin paying impact costs of their move as soon as they move into a community because their property is valued for tax purposes at the time of sale. This shifts the costs of new residents away from current citizens and requires newcomers to shoulder some of the burden. Eliminating or modifying the effects of point of sale valuation reverses this trend and shifts the burden of taxation back on current residents. Should this legislation pass, once again current members of a community will be forced to pay the impact of new residents moving in.

If a city, county or school needs additional revenue for new firefighters, teachers, etc...., to the extent it cannot be paid for from growth in the tax base, it must come from increased millage rate. These bills exclude revenue growth from assessable transfers of interest by exempting them from property taxation. That will increase the likelihood that the millage rate would have to be increased to pay for the costs of maintaining existing levels of service paid for by existing residents as well as new residents.

THERE WILL BE COSTS TO IMPLEMENT THIS CHANGE

The Budget Office has data which shows that a county which contracts with Smith Data was charged $35,000 for reprogramming changes to implement Act 388. Smith Data is the contractor for more than half of the counties - especially the smaller, more rural counties.

In McCormick County, the value of 1 mill in 2008 was $35,400 - about 1 mill of new tax.
In Allendale County, the value of 1 mill in 2008 was $17,197 - about 2 mills of new tax.

THERE IS NO ECONOMIC URGENCY TO PASS THIS LEGISLATION

Although proponents are pushing for a rapid passage of this legislation, the recent economic trends seem to signal that patience is a better approach than passage. Falling home values as a result of the economic recession mean that a point of sale reassessment is as likely to benefit a home buyer as to be detrimental in terms of tax burden. Holley Hewitt Ulbrich, Alumni Professor Emerita of Economics at Clemson University and Senior Fellow of the Strom Thurmond Institute states that "... this is a good time to reflect, to look at the experience of other states, to get a sense of the current and potential impact of retaining or changing point of sale, and to move deliberately forward with a more thoughtful approach."

EITHER BILL VIOLATES THE EQUAL PROTECTION CLAUSE

In Nordlinger v. Hahn, 505 U.S. 1 (1992) California's Proposition 13 law survived a challenge under the equal protection clause of the US Constitution because Proposition 13 has a feature very similar to the ATI/point of sale provision in Act 388.

H. 3713 and S. 229 violate the 14th Amendment to the US Constitution because they remove the provision which the US Supreme Court pointed to in upholding California's Proposition 13.

The bills create a system where new construction pays tax on 100% of its fair market value and some existing property owners pay tax on 100% of their fair market value. However, any new purchaser of existing property which got a benefit under the 15% valuation cap would be taxed on less than the fair market value of the property.

Treating similar properties differently for tax purposes is constitutional, if the state can articulate a rational basis for the different treatment which furthers a legitimate governmental interest. To date, we can find no rational basis which has been upheld by another court with a similar set of facts.