

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 342 (587286)

INTRODUCER: Committee on Appropriations

SUBJECT: Rental of Homestead Property

DATE: March 15, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Favorable</b>
2.	Babin	Diez-Arguelles	AFT	<b>Fav/CS</b>
3.	Babin	Hansen	AP	<b>Pre-meeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 342 allows the rental of homestead property for up to 30 days per calendar year without the property being considered abandoned as a homestead or otherwise negatively affecting the homestead status of the property. However, if homestead property is rented for more than 30 days for two consecutive years, the property is considered abandoned as a homestead.

The Revenue Estimating Conference estimates that this bill will reduce local government property tax revenues by at least \$0.11 million annually.

This bill substantially amends section 196.061, Florida Statutes.

**II. Present Situation:**

**Exemptions and Property Classifications**

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes.<sup>1</sup> However, sections 3, 4, and 6, Article VII of the Florida Constitution, provide for

<sup>1</sup> Fla. Const. Art. VII, s. 4.

specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.<sup>2</sup> Available exemptions include homestead exemptions and exemptions for property used for education, religious, or charitable purposes.<sup>3</sup>

### **Homestead Exemption**

Every person who maintains his or her permanent residence<sup>4</sup> on property to which he or she holds legal and equitable title is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies, including school districts.<sup>5</sup> An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by schools.<sup>6</sup>

### **Homestead Assessment Limitation: Save Our Homes**

In 1992, Florida voters approved an amendment to s. 4, Art. VII of the State Constitution which is popularly known as the Save Our Homes amendment. This amendment limited the increase in assessment of homestead property to the change in the Consumer Price Index or 3 percent, whichever is lower.

### **Changes Affecting Save Our Homes**

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. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after the initial assessment, these items are subject to the Save Our Homes assessment limitation. If the homestead use of the property is terminated, the property is assessed at just value.

### **Loss of Homestead through Rental**

Section 196.061, F.S., provides guidance on homestead status, rentals of the homestead and its abandonment as follows:

- Rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead.<sup>7</sup>
- Abandonment continues until the dwelling is physically occupied by the owner.

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<sup>2</sup> See s. 196.031, F.S.

<sup>3</sup> Fla. Const. Art. VII, ss. 3 and 6.

<sup>4</sup> Pursuant to s. 196.012(18), F.S., “permanent residence” means 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. Intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser.

<sup>5</sup> Fla. Const. Art. VII, s. 6.

<sup>6</sup> *Ibid.*

<sup>7</sup> Ch. 2012-193, s. 18, Laws of Fla., introduced the “all or substantially all of a” dwelling language. Owners sometimes rented the majority of a dwelling but retained possession of a closet or similar limited space in an effort to retain a homestead exemption.

- The abandonment of the homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as the property is not rented in two consecutive years.
- The provisions of s. 196.061, F.S., do not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act, or who volunteers for service as a member of the Armed Forces of the United States.

Florida courts have traditionally emphasized that a determination of homestead abandonment is made on a case-by-case basis.<sup>8</sup> In particular, courts conduct a factual inquiry as to whether the owner's rental activity constituted abandonment of the homestead.<sup>9</sup>

A 2010 Florida Bar Journal article summarized many of the issues related to homesteads and rentals.<sup>10</sup> The authors trace the historical understanding that property owners who rent their entire dwelling for long periods of time forfeit the homestead tax exemption.

The underlying rationale for the termination of homestead due to long-term rentals is that the owner's long-term rental activity, coupled with his or her implied absence from the property, signifies the owner's intent to reside elsewhere. Therefore, the owner's departure and residence elsewhere, coupled with the conversion of his or her home into a commercially oriented use (a rental), reveals an "intent" to abandon the homestead.<sup>11</sup>

The Bar Journal article continues on to contemplate an alternative rental circumstance:

By contrast, there are occasions when property owners do not intend to abandon their residence through rental. For example, numerous Floridians rent out their homes for short periods of time and may even remain on the premises during the course of these rentals.<sup>12</sup>

Examples of these types of short term rentals include those associated with annual sporting events, arts festivals, college graduations, or business-related symposiums and conventions.

### **Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption**

If a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is

<sup>8</sup> Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar (January, 2010, Volume 84, No.1) available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

<sup>9</sup> See generally *Poppell v. Padrick*, 117 So. 2d 435 (Fla. 2d DCA 1959); *Jacksonville v. Bailey*, 30 So. 2d 529 (Fla. 1947).

<sup>10</sup> Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental*, The Florida Bar Journal (January, 2010, Volume 84, No.1) available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument>.

<sup>11</sup> *Ibid.* Section 196.012(13), F.S., defines "real estate used and owned as a homestead" to mean real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion used for commercial purposes. Property rented for more than 6 months is presumed to be used for commercial purposes.

<sup>12</sup> *Ibid.*

required to serve a notice of tax lien against property owned by the person.<sup>13</sup> The tax lien subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, if the exemption was granted as the result of a clerical error, the person receiving the exemption is not assessed penalties or interest. Before a lien is filed, the owner is given 30 days to pay the taxes, penalties, and interest.<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 196.061, F.S., to allow the rental of homestead property for up to 30 days per calendar year without the property being considered abandoned or affecting the homestead status of the property. If the property is rented for more than 30 days for two consecutive years, the property is considered abandoned as a homestead.

Section 1 also reaffirms that sales tax is due on the rental of the property.

**Section 2** provides an effective date of July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The Legislature may not enact, amend, or repeal a general law if the anticipated effect of doing so would be to reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989, except by a two-thirds vote of the membership of each chamber.<sup>15</sup> However, laws that have an “insignificant fiscal impact,” which for fiscal year 2012-13 is \$1.9 million, do not need a two-thirds vote.<sup>16</sup>

The Revenue Estimating Conference estimates that this bill will reduce local government property tax revenues by at least \$0.11 million annually. Since the bill is expected to reduce local revenues by less than \$1.9 million, a two-thirds vote is not required.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>13</sup> Section 196.161(1)(b), F.S.

<sup>14</sup> See s. 196.161(1)(b), F.S.

<sup>15</sup> Fla. Const. Art. VII, s. 18(b)

<sup>16</sup> Fla. Const. Art. VII, s. 18(d)

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Property owners who have a homestead exemption will be able to rent their dwellings for up to 30 days a year and retain the homestead status of their property and any applicable Save our Homes assessment limitation. As a result, an indeterminate number of additional short-term rental opportunities may become available to homestead owners who decide to rent their properties up to 30 days.

**C. Government Sector Impact:**

The Revenue Estimating Conference estimates that this bill will reduce local government property tax revenues by at least \$0.11 million annually.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Finance and Tax on March 13, 2013:**

- The CS reaffirms that sales tax is due on the rental of homestead property.

**B. Amendments:**

None.