STORAGE NAME: h3151a.ft
DATE: March 5, 1998

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HJR 3151

RELATING TO: Section 6, Article VII, Florida Constitution

SPONSOR(S): Representative Villalobos

COMPANION BILL(S): SJR 246

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
(2) FINANCE AND TAXATION YEAS 13 NAYS 0
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

HJR 3151 would authorize the Legislature to permit counties or municipalities to grant an additional homestead tax exemption of up to $25,000 to resident homeowners who are at least 65 years of age and whose household income does not exceed $20,000.

The resolution is not self-executing. The resolution, if implemented, provides that the general law implementing the legislation must allow the counties or municipalities to adopt the new exemption by ordinance, and must provide for the periodic adjustment of the income limitation for changes in the cost of living.

This resolution would be on the ballot and submitted to the electors at the next general election. If approved, the amendment would take effect January 1, 1999.

This resolution would have a minor fiscal impact on the Department of State. If implemented, the increased exemption would have a significant fiscal impact on local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Article VII, Section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. In addition, effective January 1, 1994, subsection (c) of Article VII, Section 4, provided a limitation on the extent that assessments for homesteads may be changed annually on January 1 of each year. Changes in assessment may not exceed the lower of 3 percent of the assessment for the prior year or the percent change in the Consumer Price Index.

Article VII, Section 6 of the Florida Constitution authorizes an exemption from ad valorem taxation for homestead property used by taxpayers as their permanent residence. Subsection (a) provides a basic $5,000 exemption to all qualified homeowners. Subsection (b) prohibits the granting of more than one exemption to any one person or the granting of an exemption that is in excess of the total assessed value of the property. Subsection (c) increases the exemption to $25,000 for school district levies for all qualified homestead owners and to $10,000 for all other ad valorem tax levies if the homestead owner has attained age 65. Subsection (d) increases the exemption to $25,000 for non-school district levies. This subsection further provides that the increase is not applicable upon the effective date of any amendment to Article VII, Section 4 of the Florida Constitution that would authorize the assessment of homestead property at a specified percentage of its just value. A third provision of subsection (d) disallows the increased exemption in counties in which the tax roll has not been certified as in compliance with Article VII, Section 4 of the Florida Constitution. Subsection (e) authorizes the Legislature to give ad valorem tax relief to renters.

B. EFFECT OF PROPOSED CHANGES:

This resolution for an additional homestead exemption is not self-executing, but would require general law implementation by the Legislature. The resolution would authorize the Legislature to allow counties or municipalities, with respect to their tax levies, to grant an additional homestead exemption of up to $25,000 to resident homeowners who are at least 65 years of age and whose household income does not exceed $20,000. If the Legislature enacts implementing legislation, the implementing language must require the local government to adopt the increased exemption by ordinance.

Implementing legislation also would have to provide for the periodic adjustment of the income limitation based upon changes in the cost of living.

The resolution would be on the ballot and submitted to the electors at the next general election. If approved, the amendment would take effect January 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

If implemented, and if local taxing authorities need to keep their revenues constant, they will need to shift the tax burden to other taxpayers.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

If passed and implemented, the resolution would permit counties and municipalities to provide an additional homestead exemption of up to $25,000 to a real property owner who is 65 years or older and whose household income is less than $20,000.

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None. The resolution would amend Section 6, Article VII of the Florida Constitution.

E. SECTION-BY-SECTION RESEARCH:

See Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Division of Elections estimates that the total cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 1998 general election is $35,000.

Estimates of the loss of revenue to local governments if this resolution is passed and implemented are provided in B. below. This estimate does not include the administrative costs which would occur upon implementation.

2. Recurring Effects:

According to the Revenue Estimating Conference, this resolution should have no impact on General Revenue.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminant.

2. Recurring Effects:

This resolution would not have an immediate fiscal impact (with the exception of the cost of advertising the proposed amendment prior to the general election), because implementing language is required. If the resolution is implemented by general law and by local ordinance, it will have an impact on participating counties and municipalities. To the extent that a county or municipality passes an ordinance to grant the additional exemption and is not levying the maximum millage allowed by

the tax cap, this resolution would reduce the tax base and may result in a tax shift to taxpayers who would not be entitled to the additional exemption. If the county or municipality that passes an ordinance to grant the additional exemption has already reached the millage tax cap, the local government would experience a reduction in revenue.

According to the Revenue Estimating Conference, estimated revenue losses for local governments for fiscal year 2001-02 would be $102.4 million.

This estimate includes the following assumptions:

* The full $25,000 will be allowed statewide.
* The percent of homeowners meeting the age requirement of this amendment will be the same as the percent of senior to regular exemptions from the 1979 roll, i.e. 26.1 percent.
* Of those homeowners, the percent meeting the $20,000 threshold of income will be the percent of households with a member 65 and up where household income is $20,000 or less from the 1990 Census.
* An inflation adjustment is not required for homestead value because homes valued up to $50,000 do not appreciate.
* An inflation adjustment is needed for 1990 household income. In 1997 dollars, this amount is $16,232.
* Although the $25,000 has an effective date of January 1, 1999, because of the time required to pass a general law implementing this exemption and for local governments to pass ordinances adopting it, it is assumed that no exemptions will be granted on the 1999 tax roll.

3. Long Run Effects Other Than Normal Growth:

Indeterminant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If millage rates are raised in certain areas by local taxing authorities to compensate for the decreasing tax base resulting from this resolution, the tax burden would be shifted from those owning homes who are 65 and older and meet the income requirement, to younger owners of homes and to other types of property.

2. Direct Private Sector Benefits:

Elderly homeowners whose annual income is less than $20,000, and who reside in a locality where the increased exemption is adopted will benefit from reduced ad valorem taxes.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision does not apply to joint resolutions to amend the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The mandates provision does not apply to joint resolutions to amend the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The mandates provision does not apply to joint resolutions to amend the Florida Constitution.

V. COMMENTS:

The plain language of the resolution places implementation of the resolution within the discretion of the Legislature. If the Legislature chooses to implement the resolution, then the resolution requires certain provisions in the implementing language, i.e: that the counties and municipalities must adopt any additional exemption by ordinance in the manner prescribed by general law; and must provide for the periodic adjustment of the income limitation for changes in the cost of living.

Ballot Requirements

Section 101.161(1), Florida Statues, requires the substance of the amendment, in clear and unambiguous language, be followed by the word “yes” and the word “no” so that a “yes” vote will indicate approval of the proposal and that a “no” vote will indicate rejection. Although this resolution does not contain the requisite “yes” and “no” boxes, the ballot language is styled in a manner consistent with placement of “yes” and “no” choices on the actual ballot. Additionally, the proposed ballot language appears to meet the requirement that the explanatory statement not exceed 75 words in length and the ballot title, by which the measure is commonly referred to, not exceed 15 words in length. According to Advisory Opinion to the Attorney General Re Casino Authorization, Taxation, and Regulation, 656 So. 2d 466 (Fla. 1995), section 101.161, Florida Statutes, “requires a title and summary that are ‘accurate and informative,’ and that ‘[t]he summary must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots.”

Constitutional Equal Protection of the Law Concerns

This resolution is designed to benefit only those resident homeowners who are age 65 or over and who fall within certain income limitations. Among those who meet this criteria, the amendment will only benefit those within a local jurisdiction that adopts an ordinance providing for an added, or increased, exemption. It will not benefit similar persons age 65 or over in a neighboring county or municipality where the ordinance is not adopted. Therefore, the amendment may be challenged on equal protection grounds.

The United States Supreme Court examined the equal protection guaranteed by the United States Constitution in Nordlinger v. Hahn, 112 S. Ct. 2326, 2331 (1992), and stated:

> The Equal Protection Clause of the Fourteenth Amendment, [sec.] 1, [of the United States Constitution] commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' . . . [U]nless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest.

In Nordlinger, the United States Supreme Court upheld Proposition 13, the California property tax system under which increases in assessed value were limited to 2 percent per year until the property was sold or improvements made on the property. The Court considered and rejected a contention that the unfairness of the tax system was made worse because it provided exemptions from taxation for two special classes of new owners including persons aged 55 and older. The Court, at 2335, pointed out that it had previously "declined to hold that narrow exemptions from a general scheme of taxation necessarily render the overall scheme invidiously discriminatory." All that the Court requires is a plausible policy reason for the classification or that the exemption rationally further a legitimate purpose. Furthermore, long before Nordlinger, the Court pointed out that:

> [I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which [the United States Supreme] Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.

Regan v. Taxation With Representation of Wash., 461 U.S. 540, 547-48 (1983), quoting from Madden v. Kentucky, 309 U.S. 83, 87-33 (1940).

Article I, Section 2 of the Florida Constitution provides that all natural persons are equal before the law and have certain inalienable rights. In his dissenting opinion in Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992), Justice Overton suggested that the tax cap amendment to Article VII, Section 4 of the Florida Constitution may violate the equal protection clause of the Florida Constitution. Someone might also question whether this proposal violates the Florida equal protection clause. The question raised by Justice Overton in the Smith case, however, was whether Florida's equal protection clause was being modified and amended by implication without appropriate notification to the voters. If this proposal is found to have equal protection implications, it might be argued that the

proposed ballot language does not adequately reflect the amendment's possible impact upon the equal protection guarantee within the Florida Constitution.

In Osterndorf v. Turner, 426 So.2d 540 (Fla. 1982), the supreme court struck down durational residency requirements for the $25,000 homestead exemption as violative of the equal protection clause. The court reasoned that "[i]t is not a legitimate state purpose to reward certain citizens for past contributions to the detriment of other citizens." Id. However, both the Florida and U.S. Supreme Courts have upheld tax exemption disparities as long as there is a "rational basis" for selecting the particular class for special treatment. In Shevin v. Kahn, 273 So.2d 72 (Fla. 1973), aff'd, 416 U.S. 351, the Florida Supreme Court upheld the constitutionality of a $500 homestead tax exemption for widows as having a "'fair and substantial relation' to the ability of women property owners to pay taxes on property of even minimal value." Id.

Finally, although the local option nature of the resolution appears to conflict with the constitutional principle of uniformity in taxation as stated in section 2, Article VII of the Florida Constitution, according to the Florida Supreme Court, an amendment to the Constitution may create a special exception to another portion of the Constitution. "Where an amendment limits or modifies other provisions of the Constitution, it does so only to the extent defined in the amendment, and . . . except as to the 'purpose' of the amendment, the parent provision continues in force." State v. Division of Bond Finance, 278 So. 2d 614, 618 (Fla. 1973).

Related Issues

The 1997 Legislature passed HRJ 969 which will be on the ballot in 1998. This resolution would amend the Florida Constitution to permit counties and municipalities to exempt historic properties from ad valorem taxation.

Constitution Revision Commission

The following relevant propositions relating to homestead property are currently under consideration by the Constitution Revision Commission.

Proposal 51 -- Amends Article VII, Section 4, permitting improvements to real property, including homestead property, occurring between assessment dates to be assessed pursuant to general law.

Proposal 52 -- Changes the homestead exemption from $25,000 per homestead to 50 percent of the first $50,000 of assessed value, and removes the interim tax roll procedure which has not been used since 1983.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:	Legislative Research Director:
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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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