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DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: CS/HB 291

RELATING TO: Homestead Exemption

SPONSOR(S): Committee on Real Property & Probate and Representative Villalobos

COMPANION BILL(S): HB 827 (i); SB 384 (s); CS/SB 184 (s)

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

- (1) REAL PROPERTY AND PROBATE YEAS 8 NAYS 0
- (2) COMMUNITY AFFAIRS
- (3) FINANCE & TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

Pursuant to express authority provided in Section 6(f), Article VII, of the Florida Constitution, CS/HB 291 allows both counties and municipalities, through adoption of an ordinance, to each 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.

CS/HB 291

- defines the terms "household" and "household income";
- sets forth the requirements which must be followed in adopting an ordinance regarding the additional homestead exemption and provides for the repeal of such an ordinance;
- requires an annual cost-of-living adjustment to the \$20,000 income limitation;
- requires that a taxpayer claiming the exemption submit certain documentation;
- requires the Department of Revenue to make rules regarding what documentation must be submitted;
- requires a taxpayer's statement attesting to the accuracy of the documentation submitted;
- prohibits a property appraiser from granting the exemption without the required documentation; and
- provides that where title is held jointly with right of survivorship, the person residing on the property, and otherwise qualifying, may receive the entire amount of the additional homestead exemption.

This bill will have an insignificant fiscal impact upon the Department of Revenue. However, it will have an indeterminate negative fiscal impact on those local governments that choose to grant the additional exemption.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 4, Article VII, 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. Also, 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 Section 4, Article VII, of the Florida Constitution provides a limitation to 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.

Section 6, Article VII, of the Florida Constitution authorizes an exemption from ad valorem taxation for homestead property used by taxpayers as their permanent residence, as follows:

- 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 or is totally and permanently disabled and is not entitled to the exemption provided in subsection (d).
- 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 Section 4, Article VII, of the Florida Constitution.
- Subsection (e) authorizes the Legislature to give ad valorem tax relief to renters.

Section 196.031, F.S., primarily implements homestead exemption, although other statutory sections provide specific procedures and conditions, e.g., procedures for application for the exemption (s. 196.011, F.S.), the extent of the exemption (s. 196.041, F.S.), and the effect of renting homestead property. Additionally, three sections of Chapter 196, F.S., provide for additional homestead exemptions as follows:

- Section 196.081, F.S., exempts the homesteads of certain permanently and totally disabled veterans and surviving spouses of certain veterans;
- Section 196.091, F.S., exempts the homesteads of disabled veterans confined to wheelchairs; and
- Section 196.101, F.S., exempts the homestead of certain totally and permanently disabled persons.

Section 197.242, F.S., establishes the "Homestead Property Tax Deferral Act." Section 197.252, F.S., provides for deferral of ad valorem taxes for qualified individuals. Ad valorem tax deferral is available to any homeowner whose tax burden is greater than five percent of household income, and homeowners over 70 years of age whose tax burden is greater than three percent of household income. Social security income is not included in this calculation. Participation in the tax deferral plan varies by county.

According to a Senate analysis of a similar bill last year, the National Conference of State Legislatures identified four states that currently provide, by general law, for local option ad valorem exemptions or deferrals for seniors:

- The State of Delaware authorizes municipalities to exempt, by local ordinance, the realty of persons 65 or older.
- The State of Virginia authorizes local governments to exempt the homesteads of persons 65 or older whose income does not exceed the greater of either \$30,000 or the HUD income limit by family size for qualifying for federal housing assistance, excluding the first \$6,500 of any relative of the owner, other than a spouse, and whose combined net worth does not exceed \$75,000.
- The State of New York authorizes cities to grant persons 65 or older an exemption not to exceed 50 percent of the assessed value of homestead property, and allows the municipality to set an income limitation between \$3,000 and \$17,500.
- The State of Utah authorizes counties to defer or abate up to \$300 (but not more than 50 percent of the total tax assessed for the current year) of the property taxes of persons age 65 or older whose total household income does not exceed the maximum income certified for the homeowner's property tax credit.
Cooper, Senate Staff Analysis and Economic Impact Statement, ca03.ca, Nov. 20, 1998.

In November 1998, the electors of Florida approved Amendment 3, to the Florida Constitution. This amendment created subsection (f), of Section 6, of Article VII, of the Florida Constitution, and provides:

The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate . . . and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living. (emphasis added)

The constitutional amendment uses the coordinating conjunction "or" in one place -- "counties or municipalities" -- and the coordinating conjunction "and" in another -- "counties and municipalities." It is unclear from the context and express language of the constitutional amendment as to whether implementing legislation is authorized to provide for an exemption for either a municipality or a county, or both. Furthermore, the language providing that "the general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection" can reasonably be interpreted as either only allowing a maximum exemption of \$25,000 for both counties and municipalities together, or a maximum of \$25,000 each. Additionally, the "[this additional exemption]" language is presented in the singular form, not the plural form (i.e., these additional exemptions), and therefore could mean just one exemption not to exceed \$25,000; whereas, if it were envisioned that both the county and a municipality were authorized to enact such an exemption, each would have to pass their own ordinance effectively creating "additional exemptions."

B. EFFECT OF PROPOSED CHANGES:

Pursuant to the authority provided in Section 6(f), Article VII, of the Florida Constitution, CS/HB 291 allows both counties and municipalities, through adoption of an ordinance, to each grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who have legal or equitable title to the real estate who are at least 65 years of age and whose household income does not exceed \$20,000.

CS/HB 291 defines "household" to exclude persons boarding or renting. Persons living together in a room or group of rooms as a housing unit meet the definition of "household." Marital or relational status is not a factor. Accordingly, all "household" members' income will be considered.

"Household income" is defined to mean the adjusted gross income, as defined in s. 62 of the U.S. Internal Revenue Code,¹ of all members of a household.

Beginning January 1, 2001, the \$20,000 income limitation must be adjusted annually on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer price index figures for the stated 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

Additionally, CS/HB 291 sets forth the requirements counties and municipalities must comply with in establishing, by ordinance, any additional homestead exemptions. The ordinance must

- be adopted pursuant to the procedures for adoption of a non-emergency ordinance section 125.66(2), F.S.;
- specify that the exemption applies only to taxes levied by the unit of government granting the exemption; and, unless otherwise specified, such exemption will apply to all tax levies of the county or municipality granting the exemption, including dependent special districts² and municipal service taxing units.
- specify the amount of the exemption, which cannot exceed \$25,000, and if the unit of government granting the exemption specifies a different exemption amount for dependent special districts or municipal service taxing units, the exemption amount must be uniform in all dependent special districts or municipal service taxing units within the county or municipality;
- require a taxpayer claiming the exemption to annually submit to the property appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Department of Revenue.

The Department of Revenue must require by rule that the filing of such a sworn statement be supported by copies of federal income tax returns for the prior year, if any; wage and earnings statements (W-2 forms), if any; and other documents it deems necessary, for each member of the household by June 1. This gives an applicant taxpayer who submits his or her sworn statement of

¹ According to Section 62, "Adjusted gross income" means, in the case of an individual, gross income minus the following deductions: trade and business deductions; certain trade and business deductions of employees; losses from sale or exchange of property; deductions attributable to rents and royalties; certain deductions of life tenants and income beneficiaries of property; pension, profit-sharing, and annuity plans of self-employed individuals; retirement savings; certain portion of lump-sum distributions from certain pension plans; penalties forfeited because of premature withdrawal of funds from time saving accounts or deposits; alimony; reforestation expenses; and certain required repayments of supplemental unemployment compensation benefits.

² Chapter 189, F.S., deals with special districts and more particularly defines "dependent special district" to mean a *special district* that meets at least one of the following criteria:

- (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
- (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality. s. 189.403(2), F.S.

Section 189.403(1), F.S., defines "special district" to mean a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. ... The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit ... or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

household income on March 1 two months (until June 1) to provide the necessary supporting documentation.

CS/HB 291 provides that the board of county commissioners or municipal governing authority must notify the property appraiser of the adoption of an ordinance no later than December 1 of the year prior to the year the exemption takes effect. If the ordinance is repealed, the board of county commissioners or municipal governing authority must notify the property appraiser no later than December 1 of the year prior to the year the exemption expires.

Finally, CS/HB 291 provides that where title is held jointly with right of survivorship, the person residing on the property, and otherwise qualifying, may receive the entire amount of the additional homestead exemption.

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?

This bill provides that the Department of Revenue must require by rule that the filing of a sworn statement regarding household income be supported by copies of federal income tax returns and wage and earnings statements, if any, and other documents necessary, for each member of the household.

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

In those counties and municipalities where this additional exemption is granted by local ordinance, the local property appraiser will incur new and additional responsibilities. The property appraiser will be responsible for receiving applications for the new exemption, evaluating the applications and their supporting documentation, informing citizens if their application was accepted or rejected, and applying the exemption to the tax roll.

The property appraiser will have to keep track of which cities, if any, have adopted an exemption ordinance, and for how much, as well as the amount of any county exemption ordinance in existence; and, keep track of any exemption ordinances that are repealed.

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

No.

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

An agency or program is not 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?

This bill does not increase taxes directly. However, if a local government implements this additional homestead exemption and otherwise needs to keep its revenues constant, a need will arise to shift the tax burden to other taxpayers who are not eligible for this exemption.

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 implemented by a local government, an additional homestead exemption of up to \$25,000 would be granted to real property owners who are 65 years or older and who have a household income of less than \$20,000.

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

No.

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?

No.

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?

No.

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

No.

5. Family Empowerment:

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

This bill does not purport 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?

No.

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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 196.075, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue would incur insignificant costs in developing and implementing new rules, which are required by this bill, and in developing new forms as needed.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

If an additional homestead tax exemption is implemented by local ordinance, it will have an impact on the participating county or municipality. To the extent that a county or municipality passes an ordinance authorizing the additional exemption and is not levying the maximum millage allowed by its tax cap, this bill 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 such an ordinance has already reached the millage tax cap, that county or municipality would experience a reduction in revenue.

According to a 1998 Revenue Estimating Conference, the maximum possible revenue losses for local governments for fiscal year 2001-02 would be \$102.4 million.

This estimate is for information purposes only and is based on the following assumptions:

- The full \$25,000 is adopted by *all* cities and counties.
- The percent of homeowners meeting the age requirement 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, after adjusting the income to reflect inflation.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If millage rates are raised by a county or municipality to compensate for the decreasing tax base that will result if it passes a tax exemption ordinance, then the tax burden would be shifted from those owning homes who are 65 and older and meet the income requirement, to other home owners or to other types of property.

2. Direct Private Sector Benefits:

Elderly homeowners whose annual household income is less than \$20,000, and who reside in a locality where an increased exemption is adopted will benefit from reduced ad valorem taxes. Elderly homeowners in the same financial circumstances may receive varying benefits, however. Such a homeowner living in a municipality and in a county that do not adopt

exemption ordinances will receive no additional tax reduction. An affected homeowner living in a municipality that provides an additional \$25,000 tax exemption, but in a county that does not, will receive a commensurate tax break on his or her municipal taxes only. An affected homeowner living in a municipality that provides an additional \$25,000 tax exemption and in a county that also provides an additional \$25,000 tax exemption, will receive a dual commensurate tax break on his or her municipal taxes and on his or her county taxes.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

On February 4, 1999, the Finance and Taxation Committee unanimously passed PCB FT 99-02, that also deals with homestead exemption. PCB FT 99-02 differs from HB 291 in that it:

- specifies precisely how the income limitation will be adjusted annually;
- provides that "unless otherwise specified by the county or municipality" the exemption will apply to all tax levies of the county or municipality granting the exemption, including dependant special districts and municipal service taxing units;
- requires that if a different exemption amount is set forth for dependent special districts or municipal service taxing units, the exemption amount must be uniform in all dependent special districts or municipal service taxing units within the county or municipality;
- requires that the taxpayer's statement of household income attest to the accuracy of supporting documentation required to be submitted therewith; and, prohibits the property appraiser from granting the exemption without the required documentation;
- entitles those persons who are entitled to homestead exemption in s. 196.031, F.S., to the additional exemption authorized in this bill;
- clarifies that where title is held jointly with right of survivorship, the person residing on the property, who otherwise qualifies, may receive the entire amount of any additional homestead exemption; and
- provides an effective date of July 1, 1999.

The sponsor approved an amendment (the provisions are detailed above) to HB 291 which duplicates verbatim the provisions in PCB FT 99-02. Among other things, this amendment will cure a technical defect in the effective date of HB 291. The Committee on Real Property and Probate subsequently adopted a committee substitute on February 17, 1999.

Additionally a question has arisen as to whether the Truth in Millage (TRIM) notice requirements set forth in s. 200.069, F.S.,³ should be amended to reflect any additional homestead exemption that may result from the passage of this bill and adoption of a lawful ordinance.

The Committee on Community Affairs was contacted by the Florida Association of Property Appraisers providing information for CS/HB 291 related to confidentiality of personal financial information which may become public record as a result of this legislation. An amendment relating to public records exemption, cannot be placed on this bill because, pursuant to Article 1, Section 4 of the Florida Constitution, any exemptions to public records availability must be provided by general law and must be single subject legislation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1999, the Committee on Real Property and Probate adopted one "remove everything after the enacting clause" amendment. The bill, as amended, was reported out favorably as a committee substitute.

The differences between CS/HB 291 and HB 291 are the same as the differences between PCB FT 99-02 and HB 291, which are set forth above in section V, "Comments."

VII. SIGNATURES:

COMMITTEE ON Real Property and Probate:

Prepared by:

J. Marleen Ahearn, Ph.D., J.D.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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³ Section 200.069, F.S., requires that the property appraiser prepare and deliver by first-class mail to each taxpayer a notice of proposed property taxes which includes exemptions.