

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 61                      Property Tax Exemption/Ex-military Spouse  
**SPONSOR(S):** Sansom  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Veterans' &amp; Military Affairs (Sub)</u>	_____	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	_____	_____	_____
3) <u>Finance &amp; Tax</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill increases from \$500 to \$5,000 the property tax exemption for the surviving spouse of certain ex-service members.

The bill has no fiscal impact on the state budget. The bill, as introduced, has a negative \$1.4 million dollar fiscal impact on local government. The amendment recommended by the Subcommittee on Veterans' & Military Affairs reduces the negative impacts to \$.96 million.<sup>1</sup> The bill reduces the revenue raising authority of counties and municipalities and may be subject to the requirement of Article VII, section 18(b) of the State Constitution, requiring a two-thirds vote of the membership of each house of the Legislature.

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<sup>1</sup> Revenue Estimating Conference on February 13, 2003.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0061a.lgva.doc  
**DATE:** February 24, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                                         |                             |                                         |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background/Ad Valorem Taxation**

Article VII, Section 1, of the Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes levied upon real estate and tangible personal property, except as provided by general law. Article VII, Section 9 of the Florida Constitution provides that counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes, and limits these taxes to 10 mills for all county purposes, 10 mills for all municipal purposes, and 10 mills for all school purposes. Additional millage may be levied for the payment of bonds and taxes levied for a period not longer than two years when authorized by vote of the electors.

##### **Uniformity**

Article VII, Section 2, of the Florida Constitution requires:

"All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . ."

##### **Just Value**

Article VII, Section 4, of the Florida Constitution requires:

"By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . ."

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

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. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

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.

### **Exemptions from Taxation**

The Legislature is without authority to grant an exemption from ad valorem taxes where the exemption does not have a constitutional basis. *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978). Article VII, Section 3, of the Florida Constitution, provides for the following exemptions from ad valorem taxation:

- All property owned by a municipality and used exclusively by it for municipal or public purposes is exempt from taxation;
- Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation;
- Household goods, to every head of a family, in an amount fixed by general law, and property, to every widow or widower or blind or totally and permanently disabled person, in an amount fixed by general law, but not less than \$500, shall be exempt;
- Any county or municipality may grant community and economic development ad valorem tax exemptions, for the purpose of its respective tax levy, and subject to general law;
- By general law, an exemption is granted to a renewable energy source device and to the real property on which such device is installed; and
- Any county or municipality may grant historic preservation tax exemptions for the purpose of its respective tax levy, subject to the limits of general law.

Article VII, Section 6 of the Florida Constitution authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another legally or naturally dependent upon the owner. The value of the homestead exemption is currently \$25,000 of the assessed value of the real estate. 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.

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, which 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."

Pursuant to the authority provided in Section 6(f), Article VII, of the Florida Constitution, subsection (2) of s. 196.075, F.S., 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.

## **Exemptions for Persons Who Are Blind or Totally and Permanently Disabled Current Law**

As noted in Chapter 1, Article VII, Section 3(b) of the Florida Constitution requires that not less than \$500 of property, as established by general law, of persons who are blind or totally and permanently disabled be exempt from taxation. This exemption is implemented in chapter 196, F.S.  
Exemptions for Disabled Veterans

Sections 196.081 and 196.091, F.S., provide for total homestead exemptions for disabled veterans and their surviving spouses, as well as a total homestead exemption for surviving spouses of veterans who died from service-connected causes while on active duty as members of the United States Armed Forces. Section 196.24, F.S., provides a partial reduction in taxable value to any resident, ex-service member who has been disabled to a degree of 10 percent or more while serving during a period of wartime service or by misfortune.

Section 196.081, F.S., provides that any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being claimed or was a permanent resident of this state on January 1 of the year the veteran died.

Pursuant to s. 196.081, F.S., if the totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides therein, the exemption from taxation carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry.

Section 196.081, F.S., also provides that any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the veteran died. This exemption carries over to the benefit of the veteran's surviving spouse as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Section 196.091, F.S., provides that any real estate used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability and who has a certificate from the United States Government or United States Department of Veterans Affairs or its predecessor, or its successors, certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his or her transportation is exempt from taxation. In the event the homestead of the wheelchair veteran was or is held with the veteran's spouse as an estate by the entirety, and in the event the veteran did or shall predecease his or her spouse, the exemption from taxation shall carry over to the benefit of the veteran's spouse, provided the spouse continues to reside on such real estate

and uses it as his or her domicile or until such time as he or she remarries or sells or otherwise disposes of the property.

Section 196.24, F.S., provides a \$5,000 reduction in taxable value to any resident, ex-service member who has been disabled to a degree of 10 percent or more while serving during a period of wartime service or by misfortune. To qualify, the applicant must produce a certificate of disability from the United States Government or the United States Department of Veterans Affairs.

### **Effect of Proposed Changes**

The bill increases from \$500 to \$5,000 the reduction in taxable value to the surviving spouse of certain ex-service members.

#### **C. SECTION DIRECTORY:**

Section 1: Amends section 196.24, F.S., relating to evidence of disability of ex-service member; evidence of disability, to increase from \$500 to \$5,000 the reduction in taxable value to the surviving spouse of certain ex-service members.

Section 2: Provides that the bill will take upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.
2. Expenditures: None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: This bill may have a negative fiscal impact on local governments.
2. Expenditures: None.

**DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** If enacted into law, surviving spouses of certain ex-service members will benefit from reduced ad valorem taxes. This reduction in the property tax base will result in a corresponding shift in property tax burden to other property owners.

- #### **C. FISCAL COMMENTS:**
- The bill, as introduced, has a negative \$1.4 million dollar fiscal impact on local government. The amendment recommended by the Subcommittee on Veterans' & Military Affairs reduces the negative impacts to \$.96 million.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The mandates provision appears to apply because by increasing the reduction in taxable value from \$500 to \$5,000 for surviving spouses of certain ex-service members, the bill reduces municipalities' and counties' property tax base, thereby reducing their revenue-raising authority. Pursuant to subsection (b) of section 18 of Article VII, Florida Constitution, a general law, reducing the authority

that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate, may be passed by a two-thirds vote of the membership of each house of the Legislature.

2. Other: Not Applicable.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: HB 61 is similar to HB 67 by Representative Slosberg, HB 67 entitles the surviving spouse of certain ex-service members to an exemption until remarriage. However HB 67 was withdrawn from consideration by the House on February 20, 2003.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Veterans' & Military Affairs recommended a strike-everything amendment at its meeting on February 20, 2003. The strike-everything amendment changes "ex-service member" to "veteran". Veteran is defined in section 1.01(14), F.S., and ex-service member is found in Title 38, USC, sec. 4303(13)(16).<sup>2</sup> The strike-everything amendment clarifies the definition of the term "surviving spouse" using language taken from federal law.<sup>3</sup> The strike-everything amendment also states that the unremarried widow or widower of a disabled veteran had to have been married to the disabled veteran for a period of at least 20 years.<sup>4</sup>

The effect of the amendment is to reduce the fiscal impacts by approximately \$.44 million. Ex-service members by definition are not necessarily also veterans under the lawful definition of veteran thereby excluding some persons who may have previously qualified for the exemption.

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<sup>2</sup> Section 1.01(14), F.S. - The term "veteran" means a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served during one of the following periods of wartime service:

- (a) Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.
- (b) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
- (c) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.
- (d) World War II: December 7, 1941, to December 31, 1946.
- (e) Korean Conflict: June 27, 1950, to January 31, 1955.
- (f) Vietnam Era: February 28, 1961, to May 7, 1975.
- (g) Persian Gulf War: August 2, 1990, and ending on the date thereafter prescribed by presidential proclamation or by law.

Title 38, USC, sec. 4303 - (13) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(16) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

<sup>3</sup> Title 10, USC, Chapter 55, Sec. 1072(2).

<sup>4</sup> Title 10, USC, Chapter 55, Sec. 1072(2)(G)