

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:

Current law provides exemptions from ad valorem taxation for disabled veterans. For example, 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 is exempt from taxation.

Current law also provides a \$5,000 reduction in the taxable value of property 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.

This bill amends this \$5,000 property tax exemption by changing "ex-service member" to "veteran." This change has the potential effect of narrowing those who may be covered by the exemption. The bill then extends this exemption to certain surviving spouses of those veterans. However, any person whose property qualified for this exemption as a disabled ex-service member on the 2004 tax roll shall continue to qualify for this exemption.

The addition of the exemption under this bill increases the total property tax exemption to certain surviving spouses to \$5,500.

During the 2003 Legislative Session, the Revenue Impact Conference estimated the fiscal impact of identical legislation to be less than \$1 million in FY 2004/05 for all local governments levying property taxes. Consequently, the bill was exempted from the constitutional mandates restriction because of its insignificant fiscal impact.

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.¹

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.² In addition, modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.³ 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 person who is a widow or widower, blind, or totally and permanently disabled, 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

¹ *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

² *Archer v. Marshall*, 355 So.2d 781, 784 (Fla. 1978).

³ *Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

- 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.

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

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.

Total Exemption for Totally and Permanently Disabled

Section 196.101, F.S., exempts the total value of a homestead used and owned by a quadriplegic, paraplegic, hemiplegic, or other "totally and permanently disabled person, as defined in s. 196.012(11), who must use a wheel chair for mobility or who is legally blind . . ." Section 196.012(11), F.S., defines a "totally and permanently disabled person" as a person who is currently certified by two licensed physicians of this state who are professionally unrelated, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration, to be totally and permanently disabled.

Section 196.101(3), F.S., provides that the production by any totally and permanently disabled person entitled to an exemption under this section of a certificate of such disability from two licensed doctors of this state or from the U.S. Department of Veterans Affairs or its predecessor to the property appraiser is prima facie evidence of the fact that he or she is entitled to such exemption.

Except for quadriplegics, the section restricts the exemption to households with gross incomes not exceeding \$14,500. This income limitation is annually adjusted by the percentage change in the average cost-of-living index. The section directs the Department of Revenue to require by rule that the taxpayer annually submit a sworn statement of gross income, which must be accompanied by copies of federal income tax returns for the prior year, wage and earnings statements (W-2 forms), and other documents DOR deems necessary, for each member of the household. The taxpayer's statement must attest to the accuracy of such copies.

Partial Exemption for Widows, Widowers, Blind Persons, and Persons Totally and Permanently Disabled

Section 196.202, F.S., provides that property to the value of \$500 of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation. The section defines a "totally and permanently disabled person" as a person who is currently certified by one physician licensed in this state, by the United States Department of

Veterans Affairs or its predecessor, or by the Social Security Administration, to be totally and permanently disabled.

The exemption provided in s. 196.202, F.S., is not limited to homestead property. Persons who qualify for the exemption (widows, widowers, blind persons, or totally and permanently disabled persons) may apply this exemption to homestead property or to other taxable property owned by them. (AGO 73-325). Thus, a person qualifying for the total homestead exemption provided under s. 196.101, F.S., could also receive the \$500 exemption provided for in s. 196.202, F.S., for purposes of non-homestead property.

Exemption for Disabled Ex-Service Members

Section 196.24, F.S., provides a \$5,000 reduction in taxable value to any resident, ex-service member⁴ who has been disabled to a degree of 10 percent or more while serving during a period of wartime service or by misfortune.⁵ To qualify, the applicant must produce a certificate of disability from the United States Government or the United States Department of Veterans Affairs.

On average, each person qualifying for the exemption receives a reduction of \$100 per year property taxes. An estimated 63,302 exemptions were granted statewide in 2000.

C. SECTION DIRECTORY:

Section 1: Amends section 196.24, F.S., relating to evidence of disability of ex-service member; evidence of disability, to entitle certain surviving spouses of certain veterans to a property tax exemption amounting to \$5000. This bill limits the existing exemption to a disabled 'veteran', as opposed to a disabled 'ex-service member,' as specified in current law. The term "veteran" is defined in s. 1.01(14), F.S., as "a person who served in the active military, naval, or air service and who was discharged or released there from under honorable conditions ..." Discharges under honorable conditions include honorable, general and medical discharges. Consequently, the following ex-service members would be ineligible for the exemption:

- members who were discharged under less than honorable conditions (an administrative discharge), or with bad conduct or a dishonorable discharge; and
- members of the Florida National Guard that have not served in active duty in federal service.

However, any person who properly received this exemption as a disabled ex-service member on the 2004 tax roll shall continue to qualify for this exemption.

In addition, this section is amended to grant the \$5,000 property tax exemption to the un-remarried surviving spouse of a veteran who is otherwise entitled to the exemption. To obtain the exemption, the un-remarried spouse must have been married to the veteran for at least 20 years.

⁴ "Ex-service member" is not defined in Florida Statutes, but Federal law provides guidance. For example, in 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. Subsection (16) defines 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.

⁵ This statutory provision was created by chapter 69-55, L.O.F. However, it was preceded by section 192.11, F.S., as authorized by Art. IX, s. 9 of the State Constitution (1885). That provision in the constitution provided that: "There shall be exempt from taxation property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

This exemption for the un-remarried surviving spouse would be in addition to the \$500 property tax exemption available to all resident widows and widowers in this state, pursuant to s. 196.202, F.S.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If enacted into law, certain surviving spouses of certain veterans 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.

Narrowing eligibility from 'ex-service members' to 'veterans' will exclude ex-service members and certain surviving spouses if these members were discharged under less than honorable conditions, and members of the Florida National Guard that have never served in federal service.

D. FISCAL COMMENTS:

This bill grants a property tax exemption to the un-remarried surviving spouse of a veteran who is otherwise entitled to the exemption. In addition, it narrows eligibility from 'ex-service members' to 'veterans', thus excluding ex-service members discharged under less than honorable conditions, and members of the Florida National Guard that have never served in federal service. However, any person who properly received this exemption as a disabled ex-service member on the 2004 tax roll shall continue to qualify for this exemption.

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. However, laws of insignificant fiscal impact are exempted from this requirement.

During the 2003 Legislative Session, the Revenue Impact Conference estimated the fiscal impact of identical legislation to be less than \$1 million in FY 2004/05 for all local governments levying property taxes. Consequently, the bill was exempted from the constitutional mandates restriction because of its insignificant fiscal impact.

2. Other:

Although the original exemption from taxes granted in s. 196.24, F.S., dates back to the 1930's, and numerous revisions have been made to this section of the statutes, it is not clear whether a general law providing a tax exemption for partially disabled veterans or their surviving spouses is permitted by the Florida Constitution.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: It appears that the intent of narrowing eligibility from 'ex-service members' to 'veterans' will exclude ex-service members and certain surviving spouses, if those members were discharged under less than honorable conditions. Unfortunately, this change will also result in disqualifying members of the Florida National Guard that have never served in federal service.

To remedy this predicament, the sponsor may wish to consider retaining the term 'ex-service member' and include a reference to the definition of the term in s. 250.01(19), F.S., and an additional qualification that the ex-service member have been discharged under honorable conditions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Veterans' & Military Affairs recommended one amendment on March 3, 2004. The amendment modifies the requirement that the unremarried surviving spouse had been married to the disabled veteran for at least 20 years to at least five years.