

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2912

SPONSOR: Senator Campbell

SUBJECT: Homestead /Caretakers / Elderly Parents

DATE: March 24, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

SB 2912 proposes to implement SJR 2872, if approved by the electorate, to allow counties or municipalities, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to a person whose parents are age 65 or older and live with that person in their homestead instead of being placed in a facility for the elderly.

This bill creates s. 196.0752 of the Florida Statutes.

## II. Present Situation:

### *Property Taxation in Florida*

The ad valorem tax or “property tax” continues to be a major source of revenue for local governments in Florida. In FY 2000-01 (the last year for which fiscal information is available) property taxes constituted 39 percent of county governmental revenue (\$5.2 billion ), and 24 percent of municipal governmental revenue (\$2.1 billion), making it by far the largest single source of tax or general revenue for general purpose governments in Florida.<sup>1</sup> In addition, the property tax is the primary local revenue source for School Districts. In FY 2000-01, school districts levied \$6.5 billion in property taxes for K-12 education.<sup>2</sup>

The property tax is important not only because of the revenue it generates, but also because it is the only taxing authority not preempted by the Florida Constitution to the state.<sup>3</sup> However, the

<sup>1</sup> Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database @ <http://fcn.state.fl.us/lcir/dataAtoZ.html>.

<sup>2</sup> 2003 FLORIDA TAX HANDBOOK, p. 135. The state and federal governments contributed approximately \$9 billion in the same year.

<sup>3</sup> Article VII, Section 1 of the State Constitution.

property tax is not an unlimited source of revenue. The State Constitution caps the millage rates assessed against the value of the property.<sup>4</sup> In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions, which includes homestead exemptions.

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.<sup>7</sup> The courts have further ruled that this immunity extends to property of school districts<sup>8</sup> and certain special districts.<sup>9</sup>

In tax year 2002, the combination of these forms of property tax relief effectively reduce the taxable value of property in this state by 28 percent.<sup>10</sup> For FY 2003-04, it is estimated that the tax revenue loss due to these forms of property tax relief will be \$686 million for valuation differentials, \$2.09 billion for the “Save Our Homes” assessment limitation, and \$10.5 billion for all exemptions.<sup>11</sup>

Any additional reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.<sup>12</sup>

### *Property Tax Exemptions*

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>13</sup>

<sup>4</sup> See Article VII, Section 9 of the State Constitution. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of table value.

<sup>5</sup> Article VII, s. 4 of the State Constitution authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

<sup>6</sup> Article VII, Section 4(c) of the State Constitution authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index.

Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the “Granny Flats” assessment limitation.

The statutes also provide for differential treatment of specific property, to include pollution control devises and building renovations for the physically handicapped.

<sup>7</sup> See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utilities Commission v. Milligan*, 229 So.2d 262 (Fla. Dist.Ct. Appl. 1969); and *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975).

<sup>8</sup> *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975).

<sup>9</sup> *Sarasota-Manatee Airport Auth. V. Mikos*, 605 So.2d 132 (Fla. Dist. Ct. App. 1992).

<sup>10</sup> Out of \$1,236 billion in just (or market) value, \$347 billion was not taxed. See LCIR database @ <http://fcn.state.fl.us/lcir/dataAto?Z.html>.

<sup>11</sup> 2003 Florida Tax Handbook, p. 139-140.

<sup>12</sup> Generally, local governments respond to this resulting reduction in the tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;<sup>14</sup>
- Portions of property use predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;<sup>15</sup>
- Household goods and personal effects, not less than one thousand dollars;<sup>16</sup>
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;<sup>17</sup>
- Property used for community and economic development, by local option and as defined by general law;<sup>18</sup>
- Certain renewable energy source devices and real property on which the device is installed and operated;<sup>19</sup> and
- Historic properties, by local option and as defined by general law.<sup>20</sup>

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone,<sup>21</sup> properties used to provide affordable housing,<sup>22</sup> educational facilities,<sup>23</sup> charter schools,<sup>24</sup> property owned and used by any labor organizations,<sup>25</sup> community centers,<sup>26</sup> space laboratories,<sup>27</sup> and not-for-profit sewer and water companies.<sup>28</sup>

#### *Homestead Exemptions*

Article VII, s. 6 of the State 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

<sup>13</sup>*Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So.2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney*, 360 So.2d 415 (Fla. 1978). *Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

<sup>14</sup> Implemented in ss. 196.192(1) & 196.199(1)(c), F.S.

<sup>15</sup> Implemented in s. 196.192(2), F.S.

<sup>16</sup> Implemented in s. 196.181, F.S. This provision totally exempts household goods and personal effects of residents.

<sup>17</sup> Sections 196.081 and 196.091, F.S., provide for total homestead exemptions for disabled veterans and their surviving spouses. Section 196.101, F.S., exempts the total value of homesteads used and owned by quadriplegics. In addition, paraplegics, hemiplegics, or “other totally and permanently disabled person, as defined in s. 196.012(11), F.S., who must use a wheel chair for mobility or who is legally blind” may have their homestead exempt from taxation if the combined annual income of the household does not exceed a level set by statute (\$14,500 in 1990), annually adjusted for inflation.

The widows/widowers exemption of \$500 is implemented in s. 196.202, F.S.

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 while in active service.

<sup>18</sup> Implemented in s. 196.1995, F.S.

<sup>19</sup> Implemented in s. 196.175, F.S.

<sup>20</sup> Implemented in ss. 196.1961 & 196.1997, F.S.

<sup>21</sup> Implemented in s. 196.095, F.S.

<sup>22</sup> Implemented in s. 196.1978, F.S.

<sup>23</sup> Implemented in s. 196.198, F.S.

<sup>24</sup> Implemented in s. 196.1983, F.S.

<sup>25</sup> Implemented in s. 196.1985, F.S.

<sup>26</sup> Implemented in s. 196.1986, F.S.

<sup>27</sup> Implemented in s. 196.1994, F.S.

<sup>28</sup> Implemented in ss. 196.2001 & 196.2002, F.S.

permanent residence of another who is 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.<sup>29</sup>

Article VII, s. 6(e) of the State Constitution authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. Pursuant to this provision, s. 196.1975(9)(a), F.S., provides a \$25,000 exemption for each unit or apartment of a non-profit home for the aged not receiving a “charitable use” exemption, if such unit is occupied as a permanent residence on January 1. Similarly, s. 196.1977, F.S., provides a \$25,000 exemption for each apartment in certain proprietary continuing care facilities occupied by a person who holds a continuing care contract, who makes the apartment his or her permanent home, and who is not eligible for the homestead exemption in s. 196.031, F.S.

#### *Homestead Exemption for the Elderly*

Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed \$20,000, adjusted for inflation.<sup>30</sup>

As of October, 2003, 46 of 67 counties and 121 of 408 cities have granted this additional homestead exemption for the elderly in their respective jurisdictions.

#### *Property Tax Deferral*

Florida law also provides a means to defer the payment of annual property taxes on homestead property for qualified residents. Section 197.252, F.S., allows property owners to defer a portion of their property taxes due on homestead property for the remaining lifetime of the property owner and his or her spouse or until the sale of the property. While deferrals do not reduce the overall tax liability of a taxpayer, it does allow for change in the timing of payment.

Resident homeowners may defer the portion of property tax that exceeds 5 percent of the applicant's household income for the prior year. If household income for the prior year is less than \$10,000, all ad valorem taxes and non-ad valorem assessments may be deferred. Resident homeowners who are 65 years old or older may defer that portion of the tax that exceeds 3 percent of the applicant's household income for the previous year. The property taxes may also be deferred entirely for persons between 65 and 69 years of age, whose household income for the previous year was less than \$10,000. Or, the taxes may be deferred for persons 70 years old or older whose household income was less than \$12,000 for the previous year.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 197.0752, F.S., to implement SJR 2872, if approved by the electorate, to allow counties or municipalities, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to a person whose parents are age 65 or older and live with them instead of being placed in a facility for the elderly.

<sup>29</sup> Implemented in s. 196.031, F.S.

<sup>30</sup> Implemented in s. 196.075, F.S.

Subsection (1) provides that in accordance with s. 6(g), Art. VII of the State Constitution, the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow an additional homestead exemption of up to \$25,000 for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has at least one parent who is age 65 or older living in such residence with such person instead of being placed in a nursing home, assisted living facility, or other facility for the elderly.

Subsection (2) provides that the ordinance must meet the following requirements:

- It must be adopted under the procedures for adoption of a non-emergency ordinance;
- It must specify that the exemption applies only to taxes levied by the unit of government granting the exemption;
- It must specify the amount of the exemption, which may not exceed \$25,000; The county or municipality may specify a different exemption amount for dependent special districts or municipal service taxing units, provided it is uniform in all the districts or municipal service taxing units within the county or municipality; and
- It must require that a taxpayer claiming the exemption annually submit to the property appraiser, not later than March 1, a sworn statement that the person has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and that at least one parent of such person is age 65 or older and lives in such residence with such person instead of being placed in a nursing home, assisted living facility, or other facility for the elderly, on a form prescribed by the Department of Revenue (DOR). The ordinance must also specify the appropriate documentation or method of proof that the person's parent is at least 65 years of age and is living in the person's residence instead of being placed in a nursing home, assisted living facility, or other facility for the elderly.

Subsection (3) authorizes the Department of Revenue to require by rule that the filing of the statement be supported by copies of any appropriate documentation or method of proof required by the ordinance and be submitted for inspection by the property appraiser. Submission of supporting documentation is also required for the renewal of an exemption. Once the documents have been inspected by the property appraiser, they shall be returned to the taxpayer or otherwise destroyed. All document reviews must be completed on or before June 1. The property appraiser may not grant or renew the exemption if the required documentation requested is not provided.

Subsection (4) requires the board of county commissioners or municipal governing authority to deliver a copy of the ordinance to the property appraiser no later than December 1 of the year prior to the year the exemption will take 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.

Subsection (5) authorizes persons entitled to the homestead exemption to apply for and receive the exemption. Receipt of this exemption is subject to the provisions of ss. 196.131, F.S., (which provides penalties for providing false information when claiming a homestead exemption) and 196.161, F.S., (which provides for liens against property when an exemption is claimed by a non-resident) if applicable.

Subsection (6) provides that if 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.

Subsection (7) provides penalties for an improper claim of the exemption, similar to the provisions in s. 196.161, F.S. If the property appraiser determines that for any year within the immediately previous 10 years a person who was not entitled to the additional homestead exemption under this section was granted such an exemption, the property appraiser is required to serve upon the owner a notice of intent to record a notice of tax lien against any property owned by that person in the county. Any property that is owned by the taxpayer and is situated in this state is subject to the taxes exempted by the improper homestead exemption, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum.

However, if such an exemption is improperly granted as a result of a clerical mistake or omission by the property appraiser, the person who improperly received the exemption may not be assessed a penalty and interest.

Before any lien is filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. The lien is subject to the procedures and provisions set forth in s. 196.161(3).

**Section 2** provides that this act will take effect January 1, 2005, if a constitutional amendment authorizing this exemption is approved by the electors of this state.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

If approved by the electorate, this bill will authorize counties or municipalities, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to \$25,000 to qualified persons whose parents are age 65 or older and live with that person in their homestead.

The Legislative Revenue Impact Conference estimates that if all counties and municipalities authorize the exemption, the loss in local property tax revenue will be \$62 million in 2006/07.

In addition, any reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.

**B. Private Sector Impact:**

If approved by the electorate, and implemented by counties or municipalities, qualified persons will be eligible to apply for an additional homestead tax exemption of up to \$25,000. This would result in an estimated annual savings of approximately \$500 in property taxes for qualified recipients.

In addition, any reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.

**C. Government Sector Impact:**

The Division of Elections estimates that the cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 2004 general election is approximately \$60,000.

If this exemption is authorized by a county or municipality, property appraisers in that county will be required to re-program their respective systems to accommodate this change.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill is linked to SJR 2872, which would authorize this exemption should it be approved by the electorate.

**VIII. Amendments:**

None.