

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provided limited government: This bill provides for waiver of the annual application currently required for veterans to receive the discount provided by the Constitution.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

A. Property Assessments

Article VII, section 4 of the Florida Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value. Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

Article VII, section 4(c) of the Florida Constitution, popularly known as the "Save Our Homes" amendment, limits increases in the assessment of homestead property. Annual increases in homestead property values are limited to 3 percent or the increase in the Consumer Price Index, whichever is lower. If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law.

B. Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹ 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 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. Section 196.031, F.S., primarily implements the homestead exemption, although other statutory sections provide specific procedures and conditions, i.e., 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 rental of homestead property.

Article VII, section 3(b) of the Florida Constitution requires that not less than \$500 of property, as established in general law, of widows and widowers and persons who are blind or totally and permanently disabled be exempt from taxation. The widows/widowers exemption is implemented in s. 196.202, F.S.

Section 196.101, F.S., exempts the total value of homesteads used and owned by quadriplegics, 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..." Section 196.012(11), F.S., defines a "totally and permanently disabled person" as a person certified as totally

¹See *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).

and permanently disabled by two licensed physicians, by the U.S. Department of Veterans Affairs, or by the Social Security Administration.

C. Exemptions for Disabled Ex-Service Members

Chapter 196, F.S., establishes a number of specific exemptions for disabled ex-service members. Section 196.081, F.S., provides that an honorably discharged veteran with a service-connected total and permanent disability, surviving spouses of qualifying veterans, and spouses of Florida resident veterans who died from service-connected causes while on active duty as a member of the United States Armed Forces are entitled to an exemption on real estate used and owned as a homestead less any portion used for commercial purposes. To be eligible for this exemption, the applicant must own, occupy and have been a permanent resident of this state as of January 1st of the tax year for which the exemption is being claimed. The applicant must provide a letter from the United States Government or United States Department of Veterans Affairs as proof of service-connected total and permanent disability or the death of the spouse while on active duty. The Department of Revenue indicated that approximately 29,912 exemptions were issued under this section during 2005.

Section 196.091, F.S., provides 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 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. The applicant must provide a certificate of disability from the United States Government or the United States Department of Veterans Affairs in order to qualify for this exemption. The Department of Revenue estimated that approximately 241 exemptions were issued under this section during 2005.

Section 196.24, F.S., provides a \$5,000 reduction in taxable value to any resident, "ex-service member"² 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.³ 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 property tax reduction of \$100 per year. An estimated 89,203 exemptions were granted statewide under this provision in 2005.

D. Discount on Ad Valorem Tax for Certain Veterans

In the November 2006 general election, voters approved an amendment to s. 6, Art. VII of the State Constitution which allows veterans who are age 65 or older with a combat related disability to receive a discount from the amount of the ad valorem tax otherwise owed on homestead property. In order to qualify for this discount, the veteran must demonstrate: (1) he or she was a Florida resident at the time of entering the military service; (2) the disability was combat related; and (3) the veteran was honorably discharged upon separation from military service. The discount is in a percentage equal to the

² Pursuant to 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" as 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.

³ This statutory provision was created by ch. 69-55, L.O.F. However, it was preceded by s. 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."

percentage of the veteran's permanent, combat related disability, as determined by the U.S. Department of Veterans Affairs or its predecessor.

Applicants for this discount are required to submit documentation supporting their eligibility to the county tax appraiser by March 1 of each year. The constitutional amendment also granted authority to the Legislature to waive the requirement for an annual application. Required documentation includes the following: proof of residency at the time of entering military service; proof that the injury was combat related; an official letter from the United States Department of Veteran's Affairs stating the percentage of the veteran's permanent disability; and a copy of the veteran's honorable discharge. The constitutional amendment also provides that if the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply.

This constitutional amendment was self-executing and took effect December 7, 2006. Similar self-executing constitutional amendments have been codified in Florida Statutes to avoid confusion in that the relevant information on exemptions from ad valorem taxes may be found in both the State Constitution and chapter 196, Florida Statutes.

EFFECT OF PROPOSED CHANGES

This bill creates s. 196.082, F.S., to codify an amendment to s. 6, Art. VII of the State Constitution, that was approved by the voters in the November 2006 general election. The constitutional amendment and the bill provide that each partially or totally disabled veteran who is age 65 or older receives an ad valorem discount on homestead property if:

- The veteran's disability is combat related;
- The veteran was a resident of the state of Florida when he or she entered military service; and
- The veteran was honorably discharged from military service.

The constitutional amendment and the bill require the discount to be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. In order to qualify for the discount, a veteran must submit, by March 1, to the county property appraiser:

- Proof of residency at the time of entering military service;
- An official letter from the United States Department of Veterans Affairs which states the percentage of the veteran's service-connected disability and evidence that the disability is combat related;
- A copy of the veteran's honorable discharge; and
- Proof of age.

A veteran who is otherwise entitled to the discount but who misses the March 1 deadline may petition the value adjustment board requesting the discount under the same procedure by which someone who misses the deadline may petition for a homestead exemption.

The property appraiser must notify an applicant in writing of the reasons for a denial of the discount by July 1 of the year for which the application was filed. This notification must specify the right to appeal to the value adjustment board. The applicant may reapply in a subsequent year using the same procedure.

The bill requires property appraisers to apply the discount by reducing the veteran's homestead's taxable value before certifying the tax roll. The property appraiser is directed to:

- Apply all other exemptions, including local option exemptions, and deduct those exemptions from the assessed value;
- Subtract the percentage discount portion of the remaining value which is attributable to a service-connected disability to yield the discounted taxable value;
- Include the resulting taxable value in the certification for use by taxing authorities in setting millage; and
- Place the discounted amount on the tax roll when it is extended.

The bill amends s. 196.011(9), F.S., to allow a county, at the request of the property appraiser and by a majority vote of its governing body, to waive the annual application requirement for the veteran's disability discount. If reapplication is waived, the penalties and procedures that apply for failure to notify the property appraiser of a change in eligibility for the homestead exemption also apply to the veteran's disability discount.

This bill takes effect upon becoming a law and applies retroactively to December 7, 2006.

C. SECTION DIRECTORY:

Section 1. Creates s. 196.082, F.S., implementing s. (6)(g), Art. VII of the State Constitution.

Section 2. Amends s. 196.011, F.S.; authorizing the governing body of a county to waive the requirement that an annual application be made for a veteran's disability discount.

Section 3. Provides that the bill takes effect upon becoming a law and applies retroactively to December 7, 2006.

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: To the extent that s. 6, Art. VII of the State Constitution, which is codified in this bill, reduces the property tax base, a local government may experience a reduction in ad valorem tax revenues. The discount provided by the constitution was estimated to have a statewide recurring impact of \$20.1 million, assuming no off-setting changes in millage rates by local governments.⁴ This bill, however, appears to have no additional impact on local government revenues.

2. Expenditures: This bill allows a veteran to file an appeal with a county value adjustment board in accordance with s. 194.011(3), F.S., if the qualified veteran fails to file an application in a timely manner or if a property appraiser denies the veteran's request for the discount. This bill may result in an insignificant increase in county expenditures if veterans file appeals as authorized by this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Section 6, Art. VII of the State Constitution, which is codified in this bill, provides a discount on ad valorem tax for homestead property for veterans

⁴ See Measures Affecting Revenue and Tax Administration – 2006 Regular Session.

with a combat related disability who meet certain eligibility criteria. The percentage of the discount corresponds to the percentage of the veteran's combat related, service disability.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision may apply because the bill may increase expenditures of counties by allowing veterans to file appeals with the value adjustment boards; however, the bill appears to be exempt from the mandates provision because the fiscal impact of the bill on cities and counties appears to be insignificant.

2. Other: Under the provisions of s. 6, Art. VII of the State Constitution, one of the criteria to be eligible for a discount on ad valorem taxes related to homestead property is that a veteran with a combat related disability must have been a resident of Florida when the veteran entered military service. As such, this provision distinguishes between veterans who entered military service as Florida residents and have a combat related disability and those veterans who entered military service as residents of other states and now reside in Florida but also have a combat related disability.

This eligibility criterion potentially raises a constitutional concern related to equal protection. In *Zobel v. Williams*,⁵ the U.S. Supreme Court found that the Alaska dividend distribution plan violated the Equal Protection Clause of the Fourteenth Amendment since the state had shown no valid state interests which were rationally served by the distinction made between citizens who established residency before 1959 and those who have become residents since then. In 1985, the United States Supreme Court in *Hooper v. Bernalillo County Assessor* struck down the portion of a New Mexico statute granting a tax exemption limited to Vietnam veterans who resided in that state before May 8, 1976 as violative of the Equal Protection Clause.⁶ Relying on *Zobel*, the *Hooper* court found that favoring established residents over new residents to reward some for their prior contributions is not supported by an identifiable state interest.⁷ The *Hooper* court also noted that statutes conditioning veterans' benefits on state residence at the time of entering military service have survived challenges under the Equal Protection Clause, but those cases were decided before the *Zobel* decision.⁸

B. RULE-MAKING AUTHORITY: This bill does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: A statement of the sponsor was not provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

⁵ 457 U.S. 55 (1982).

⁶ 472 U.S. 612 (1985).

⁷ See *Hooper*, 472 U.S. at 623.

⁸ See *Hooper*, 472 U.S. at 622, FN11.