

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 1009 Tax Exemption for Totally and Permanently Disabled First Responders

SPONSOR(S): Local & Federal Affairs Committee, Metz

TIED BILLS: **IDEN./SIM. BILLS:** SJR 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	15 Y, 0 N	Dugan	Langston
2) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Monroe	Kiner

SUMMARY ANALYSIS

The Florida Constitution provides for exemption from property taxes for some persons who are totally and permanently disabled, including certain military veterans, as well as widows and widowers, including the surviving spouse of certain military veterans and the surviving spouse of certain first responders.

The joint resolution proposes an amendment to the Florida Constitution to allow the Legislature, as provided by general law, to grant a property tax exemption on homestead property to certain first responders. To qualify, the first responder must be totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. The first responder's disability must be determined by the United States Social Security Administration, and causal connection between the disability and service in the line of duty must be determined as provided by general law. The term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

The Revenue Estimating Conference has not reviewed the joint resolution. However, if approved by the electorate the joint resolution alone will have a zero impact on local government revenue due to the need for further implementation at the option of the Legislature.

Based on 2014 advertising costs, the Division of Elections within the Department of State has estimated the full publication costs for advertising the proposed constitutional amendment to be approximately \$151,742. This would be paid from non-recurring General Revenue funds.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Exemptions

Case law precedent provides that the Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁶

Article VII, section 3(b) of the Florida Constitution provides for exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled. The Legislature implemented this provision through various property tax exemptions in chapter 196, Florida Statutes. For example, s. 196.101, F.S., provides property tax exemptions for any real estate used and owned as a homestead by any quadriplegic, and any real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person who must use a wheelchair for mobility or who is legally blind.⁷ Generally, in order to qualify for an exemption as a “totally and permanently disabled person”, he or she must submit evidence of such disability as 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.⁸ Except for a quadriplegic, a person applying for an exemption under s. 196.101, F.S., must also show that they meet certain income limitations.⁹

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

¹ Fla. Const. art. VII, s. 1(a).

² Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Fla. Const., art. VII, s. 4.

⁴ Fla. Const. art. VII, ss. 3, 4, and 6.

⁵ s. 196.031, F.S.

⁶ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

⁷ s. 196.101(1)-(2), F.S.

⁸ s. 196.012(11), F.S.

⁹ S. 196.101(4), F.S.

Article VII, section 6 also authorizes the Legislature to provide, by general law, ad valorem tax relief to 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, as well as the surviving spouse of a first responder¹⁰ who died in the line of duty.¹¹ This constitutional provision was implemented¹² by the Legislature in s. 196.081, F.S. The Constitution defines "first responder" as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.¹³ The term is further defined in general law to mean:

- a law enforcement officer or correctional officer as defined in s. 943.10,
- a firefighter as defined in s. 633.102,
- or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.¹⁴

The Constitution defines "in the line of duty" as arising out of and in the actual performance of duty required by employment as a first responder¹⁵ and the term is further defined in general law to include:

- engaging in law enforcement;
- performing an activity relating to fire suppression and prevention;
- responding to a hazardous material emergency;
- performing rescue activity;
- providing emergency medical services;
- performing disaster relief activity;
- otherwise engaging in emergency response activity; or
- engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.¹⁶

United States Social Security Administration

The Social Security Administration (SSA) administers two programs that provide benefits based on disability: the Social Security disability insurance program (title II of the Social Security Act (the Act)) and the supplemental security income (SSI) program (title XVI of the Act).¹⁷ Title II provides for payment of disability benefits to individuals who are "insured" under the Act by virtue of their contributions to the Social Security trust fund through the Social Security tax on their earnings, as well as to certain disabled dependents of insured individuals.¹⁸ Title XVI provides SSI payments to disabled individuals who have limited income and resources.¹⁹

Definition of Disability

The Act and SSA's implementing regulations prescribe rules for deciding if an individual is "disabled." For all individuals applying for disability benefits under title II, and for adults applying under title XVI, the definition of disability is the same. The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.²⁰

¹⁰ Fla. Const. art. VII, s. 6(f).

¹¹ "See s. 196.081(6)(c), F.S.

¹² Ch. 2012-54, Laws of Fla

¹³ Fla. Const. art. VII, s 6(f)(3)a.

¹⁴ s. 196.081(6)(c)1., F.S.

¹⁵ Fla. Const. art. VII, s. (6)(f)(3)b.

¹⁶ s. 196.081(6)(c)2., F.S.

¹⁷ United States Social Security Administration website, available at: <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last viewed January 15, 2016).

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

The Disability Determination Process

Most disability claims are initially processed through a network of local Social Security field offices and State agencies (usually called disability determination services, or DDSs). SSA representatives in the field offices obtain applications for disability benefits and verify nonmedical eligibility requirements, which may include age, employment, marital status, citizenship/residency and Social Security coverage information.²¹ Then, the field office sends the case to a DDS for disability evaluation. The DDSs are responsible for developing medical evidence and rendering the initial determination on whether the claimant is disabled under the law.²² After completing its initial development, the DDS makes the disability determination and returns the case to the field office. The field office takes appropriate action depending on whether the claim is allowed or denied. If the DDS finds the claimant disabled, SSA will complete any outstanding non-disability development, compute the benefit amount, and begin paying benefits. If the claimant is found not disabled, the file is retained in the field office in case the claimant decides to appeal the determination.

Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution to allow the Legislature, as provided by general law, to grant a property tax exemption to certain first responders. To qualify, the first responder must be totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. The exemption applies to the property tax otherwise owed on homestead property, and may be the total amount or a portion.

The first responder's disability must be determined by the United States Social Security Administration.

Causal connection between the disability and service in the line of duty must be established by the applicant in order to qualify for the exemption. The term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease. General law implementation is required to establish a framework for making determinations of causal connection and disallowed chronic conditions and diseases.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be approximately \$135.97 per word, for a total publishing cost of approximately \$151,742.52.²³

²¹ United States Social Security Administration website, available at: <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last viewed January 15, 2016).

²² In Florida, the disability determination services are the responsibility of the Department of Health (Division of Disability Determinations).

²³ Department of State, Agency Analysis 2016 HJR 811 (December 21, 2015)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not reviewed the joint resolution. However, if approved by the electorate the joint resolution alone will have a zero impact on local government revenue due to the need for further implementation at the option of the Legislature.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, first responders with certain disabilities sustained in the line of duty would be eligible to receive property tax relief.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.²⁴ The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.²⁵

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017. However, the joint resolution provides an effective date of January 1, 2017.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2016, the Local & Federal Affairs Committee adopted an amendment to remove the requirement that the first responder be 65 or older to receive this exemption.

²⁴ Art. XI, s. 1 of the Florida Constitution.

²⁵ Art. XI, s. 5 of the Florida Constitution.

This analysis is drafted to the bill as amended.