

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SJR 1194

INTRODUCER: Senator Negron

SUBJECT: Tax Exemption for Senior, Totally Permanently Disabled First Responders

DATE: February 5, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**I. Summary:**

SJR 1194 proposes an amendment to the Florida Constitution to allow the Legislature to provide ad valorem tax relief to a first responder who is age 65 or older and totally permanently disabled as a result of an injury or injuries sustained in the line of duty. The amount of tax relief may equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

If approved by the voters in the general election held November 2016, the joint resolution will become effective on January 1, 2017.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and

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<sup>1</sup> Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

exemptions to determine the property's "taxable value."<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes,<sup>4</sup> and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### **Property Tax Exemptions**

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.<sup>11</sup> The following information discusses the constitutional authority for exemptions related to disabled persons.

#### ***Homestead Exemption***

Although not specific to disabled persons, Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies, including levies by school districts.<sup>12</sup> An additional \$25,000 homestead exemption applies to a homestead's property value between \$50,000 and \$75,000. The additional exemption does not apply to ad valorem taxes levied by school districts.

#### ***General Disability Exemption***

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 has implemented this provision through various property tax exemptions in chapter 196, Florida Statutes.

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<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> *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).

<sup>12</sup> FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.

For example, s. 196.101, F.S., provides a property tax exemption 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.<sup>13</sup> Generally, in order to qualify for the exemption, the taxpayer must submit evidence of such disability as certified by two licensed physicians of this state or the United States Department of Veterans Affairs or its predecessor.<sup>14</sup> 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.<sup>15</sup>

Section 196.081(1), F.S., provides a property tax exemption for the homesteads of totally and permanently disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying their disability are also exempt.

Section 196.091, F.S., provides a property tax exemption for the homesteads of totally disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying that the ex-servicemember is receiving or has received special pecuniary assistance for specially adopted housing due to the ex-servicemember's need for a wheelchair.

#### ***Homestead Discount for Combat-disabled Veterans***

Article VII, section 6(e) of the Florida Constitution provides a property tax discount to honorably-discharged veterans, age 65 or older who are permanently disabled due to a combat-related injury. The exemption applies for partial or total disabilities. For partially disabled persons, the exemption is in proportion to the percentage of their disability. This exemption is implemented in section 196.082, F.S.

#### ***Homestead Exemption for Surviving Spouses of Veterans and First Responders***

Article VII, section 6 of the Florida Constitution 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 responder who died in the line of duty.<sup>16</sup> This constitutional provision is implemented 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.<sup>17</sup>

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 responder.<sup>18</sup> The term is further defined in statute to include:

- While engaging in law enforcement;

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<sup>13</sup> Section 196.101(1)-(2), F.S.

<sup>14</sup> Section 196.101(3), F.S.

<sup>15</sup> Section 196.101(4), F.S.

<sup>16</sup> FLA. CONST. art. VII, s. 6(f).

<sup>17</sup> FLA. CONST. art. VII, s. 6(f)(3)a.

<sup>18</sup> FLA. CONST. art. VII, s. (6)(f)(3)b.

- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.<sup>19</sup>

### **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).<sup>20</sup> 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.<sup>21</sup> Title XVI provides SSI payments to disabled individuals who have limited income and resources.<sup>22</sup>

#### ***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.<sup>23</sup>

#### ***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). Representatives of the SSA 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.<sup>24</sup> 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.<sup>25</sup> After completing its initial development, the DDS makes the disability determination and

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<sup>19</sup> Section 196.081(6)(c)2., F.S.

<sup>20</sup> United States Social Security Administration website, *available at* <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last visited Feb. 2, 2016).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> United States Social Security Administration website, *available at* <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last visited Feb. 2, 2016).

<sup>25</sup> In Florida, the disability determination services are the responsibility of the Department of Health (Division of Disability Determinations).

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, the SSA will complete any outstanding non-disability development, compute the benefit amount, and begin paying benefits. If the claimant is found not to be disabled, the file is retained in the field office in case the claimant decides to appeal the determination.

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

The joint resolution proposes an amendment to Article VII, section 6 of the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to a first responder who is age 65 or older and totally permanently disabled as a result of an injury or injuries sustained in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment requires a first responder's total permanent disability to be determined by the United States Social Security Administration prior to qualifying for the ad valorem tax relief. Furthermore, causal connection between a disability and service in the line of duty will not be presumed, but 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.

If approved by 60 percent of voters, the proposed constitutional amendment will be effective January 1, 2017.

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

#### **A. Municipality/County Mandates Restrictions:**

The mandate provisions in Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. Other Constitutional Issues:**

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>26</sup>

Article XI, section 5(d) of the Florida 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 6th week immediately preceding the week the election is held. The Department of State estimates that the costs for advertising the proposed constitutional amendment will be approximately \$136 per word with a minimum total publishing cost of \$151,742.<sup>27</sup>

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

SJR 1194 does not have a fiscal impact because, by itself, it does not grant property tax relief. The impact would come when the Legislature implements the provision through a general bill.

### B. Private Sector Impact:

If SJR 1194 is approved by the electorate and implemented by the Legislature, totally permanently disabled first responders who are over the age of 65 may receive property tax relief.

### C. Government Sector Impact:

Article XI, section 5(d) of the Florida 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 6th week immediately preceding the week the election is held. The Department of State estimated that the costs for advertising the proposed constitutional amendment will be approximately \$136 per word with a minimum total publishing cost of \$151,742.<sup>28</sup>

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<sup>26</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

<sup>27</sup> Department of State, *Senate Joint Resolution 1194 Fiscal Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Finance and Tax).

<sup>28</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

SJR 1194 substantially amends the following articles of the Florida Constitution: Article VII, section 6 and Article XII.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.