

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.)

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

BILL: PCS/CS/CS/SB 764 (929072)

INTRODUCER: Appropriations Subcommittee on Finance and Tax; Community Affairs Committee;
Governmental Oversight and Accountability Committee; and Senator Baxley

SUBJECT: Ad Valorem Taxation

DATE: April 14, 2017

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|--------------------------|
| 1. Peacock | Ferrin | GO | Fav/CS |
| 2. Present | Yeatman | CA | Fav/CS |
| 3. Babin | Diez-Arguelles | AFT | Recommend: Fav/CS |
| 4. | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 764 provides an exemption from ad valorem taxation for the homestead of a first responder who is totally and permanently disabled as a result of injuries sustained in the line of duty and to his or her surviving spouse.

The bill also provides application requirements and specifies documentation required to receive the exemption, including a physician's and an employer's certificate. Additionally, the bill provides penalties for any person submitting false information for purposes of claiming the exemption.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. The prior version of the bill was estimated to reduce local governments' property tax receipts by \$4.5 million per year, beginning in Fiscal Year 2017-2018.

The bill takes effect upon becoming law and applies to the 2017 tax roll.

This bill may be a mandate requiring a two-thirds vote of the membership of the Senate. See Section IV.A. of the analysis.

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.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

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

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ 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;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

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.¹¹ The following information discusses the exemptions that disabled persons may receive.

¹ Both real property and tangible personal property are 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.

² 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).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ *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).

Homestead Exemption

Although not specific to disabled persons, 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.¹² An additional \$25,000 homestead exemption applies to a homestead's property value between \$50,000 and \$75,000; however, the additional exemption does not apply to ad valorem taxes levied by school districts.¹³

General Disability Exemption

The Florida Constitution provides broad authority for exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled.¹⁴ The Legislature has implemented this provision through various property tax exemptions in ch. 196, F.S.

Full Homestead Exemption for Blind Persons and Quadriplegic, Paraplegic, Hemiplegic, and Totally and Permanently Disabled Persons Confined to Wheelchairs

Section 196.101, F.S., provides a full property tax exemption for any real estate used and owned as a homestead by any quadriplegic, paraplegic, hemiplegic, or other totally and permanently disabled person who must use a wheelchair for mobility, or who is legally blind.¹⁵ 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.¹⁶ Except for a quadriplegic, applicants must also show that they meet certain income limitations.¹⁷

Full Homestead Exemption for Totally and Permanently Disabled Veterans

Section 196.081(1), F.S., provides a full 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.

Full Homestead Exemption for Veterans confined to Wheelchairs

Section 196.091, F.S., provides a full 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-service member is receiving or has received special pecuniary assistance for specially adopted housing due to the ex-service member's need for a wheelchair.

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

¹³ FLA. CONST. art VII, s. 6(a).

¹⁴ FLA. CONST. art. VII, s. 3(b).

¹⁵ Section 196.101(1)-(2), F.S.

¹⁶ Section 196.101(3), F.S.

¹⁷ Section 196.101(4), F.S.

Proportional Homestead Discount for Combat-disabled Veterans

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.¹⁸ The discount applies for partial or total disabilities. For partially disabled persons, the discount is in proportion to the percentage of their disability.

Homestead Exemption for Surviving Spouses of Veterans and First Responders

Although not specific to disabled persons, 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.¹⁹ 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.²⁰

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.²¹ This term is further defined in statute to include:

- While engaging in law enforcement;
- 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.²²

2016 Constitutional Amendment for First Responders – Amendment 3

In the general election held on November 8, 2016, the electors authorized the Legislature to grant property tax relief to certain disabled first responders.^{23,24,25}

Under the amendment, the Legislature is authorized to provide property tax relief to first responders who are totally and permanently disabled as a result of injuries sustained in the line of duty; however, the causal connection between a disability and service in the line of duty shall not be presumed, and disability, for purposes of the amendment, does not include a chronic condition

¹⁸ FLA. CONST. art. VII, s. 6(e); s. 196.082, F.S.

¹⁹ FLA. CONST. art. VII, s. 6(f).

²⁰ FLA. CONST. art. VII, s. 6(f).

²¹ *Id.*

²² Section 196.081(6)(c)2.a.-h., F.S.

²³ See Constitutional Amendment 3 (2016), Florida Department of State, available at: <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-92.pdf>.

²⁴ FLA. CONST. art. VII, s. 6(f)(3).

²⁵ The Legislature proposed the amendment through HJR 1009 (2016).

or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.²⁶

The amendment took effect on January 1, 2017.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 196.011(1)(b), F.S., to add a reference to the exemption for certain totally and permanently disabled first responders and for their surviving spouses contained in newly created s. 196.102, F.S., to the list of exemptions for which the application form must include a space for social security numbers of the applicant and the applicant's spouse.

Section 2 of the bill creates s. 196.102, F.S., creating a full property tax exemption for homestead property owned by a person who is totally and permanently disabled as a result of an injury received in the line of duty as a first responder. The person must be a resident of this state on January 1 of the year for which the exemption is claimed.

The bill defines "first responder" as a law enforcement officer or correctional officer as defined in s. 943.10, F.S.,²⁷ a firefighter as defined in s. 633.102, F.S.,²⁸ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,²⁹ who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "cardiac event" as a heart attack, stroke, or vascular rupture.

The bill defines "in the line of duty" to mean:

- While engaging in activities within the course and scope of employment as a first responder;
- 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;

²⁶ FLA. CONST. art. VII, s. 6(f)(3).

²⁷ Section 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full-time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(2), F.S., defines "correctional officer" as any person who is appointed or employed full-time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

²⁸ Section 633.102(9), F.S., defines "firefighter" as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under s. 633.408, F.S.

²⁹ Section 401.23(11), F.S., defines "emergency medical technician" as a person who is certified by the Department of Health to perform basic life support pursuant to part III of ch. 401, F.S. Section 401.23(17), F.S., defines "paramedic" as a person who is certified by the Department of Health to perform basic and advanced life support pursuant to this part.

- 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.

The bill provides that total and permanent disability requires that the applicant's disability render him or her unable to engage in any substantial gainful occupation due to an impairment of the mind or body that is reasonably certain to continue throughout the life of the applicant.³⁰

The bill provides that total and permanent disability that results from a cardiac event does not qualify for the exemption unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with competent medical evidence showing that:

- The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the first responder's total and permanent disability; and
- The cardiac event was not caused by preexisting vascular disease.

The bill allows the first responder to qualify for the exemption using one of two methods.

Under method one, the first responder can qualify by demonstrating that he or she qualifies for the homestead exemption for totally and permanently disabled persons provided in s. 196.101, F.S. (*See discussion supra*, page 3).

Under method two, if the first responder provides the following documents to the property appraiser of the county where the property is located, the documents serve as prima facie evidence that the first responder is entitled to the exemption:

- An award letter, based on total and permanent disability, from the Social Security Administration;
- A certificate of total and permanent disability, in a specified form, from a physician licensed in this state, attesting that the applicant's total and permanent disability is reasonably expected to continue for the duration of the applicant's life.
- A certificate from the organization that employed the first responder at the time that the injury or injuries occurred.

Physician's Certification of Total and Permanent Disability

The bill requires the physician's certificate to include specified information regarding the applicant's total and permanent disability. The physician must certify that the applicant, identified by name and social security number, is totally and permanently disabled. The physician must also list the disabling condition. Additionally, the physician's certificate must include a notice to the taxpayer that each Florida resident applying for an exemption must present to the county property appraiser a copy of the form, an award letter from the Social Security Administration, and a letter from the first responder's employer. Each form is to be completed by a licensed Florida physician. The physician's certificate must also include a notice to the taxpayer and the physician that any person who knowingly and willfully gives false

³⁰ This standard is based on the standard used by the Veterans Administration. *See* 38 C.F.R. s. 3.340(a) and (b).

information for the purpose of claiming the homestead exemption commits a misdemeanor of the first degree, punishable by up to 1 year in prison, a fine up to \$5,000, or both.

Employer Certificate

The employer certificate must, at a minimum, attest and include the title of the person signing the certificate, the name and address of the employing entity, a description of the incident that caused the injury or injuries, and a statement that the first responder's injury or injuries were:

- Directly and proximately caused by service in the line of duty.
- Without willful negligence on the part of the first responder.
- The sole cause of the first responder's total and permanent disability.
- If the total and permanent disability resulted from a cardiac event, the employer must also certify that the cardiac event occurred no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder has provided the employer with medical evidence showing that the nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability, and that the cardiac event was not caused by a preexisting vascular disease.

In addition, the employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The first responder may deliver the original employer certificate to the property appraiser's office or the first responder's employer may directly transmit the employer certificate to the applicable property appraiser.

Surviving Spouse

The bill provides that the tax exemption carries over to the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

Application for Exemption

The bill provides that a first responder may apply for the exemption before producing the necessary documentation. Upon receipt of the documentation, the property appraiser will grant the exemption as of the date of the original application and the excess taxes paid shall be refunded. Any refund of excess taxes paid is limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e), F.S.³¹

The provisions of s. 196.011(9), F.S., for waiving the requirement for property owners to submit an annual application to the property appraiser also apply to applications made under this section.

³¹ A claim for refund may not be granted unless the claim is made within 4 years after January 1 of the tax year for which the taxes were paid.

Penalties

The bill provides that any person who knowingly or willfully gives false information for the purpose of claiming homestead exemption under this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S.,³² or by fine of not more than \$5,000, or both.

Administrative Rules

The bill authorizes and provides that the Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, F.S., for the administration of the application process for the 2017 calendar year. This provision is repealed on August 30, 2018.

The bill provides that notwithstanding the provisions of ss. 196.011 and 196.102, F.S., the deadline for a first responder to file an application with the property appraiser for an exemption under s. 196.102, F.S., for the 2017 tax year is August 1, 2017.

The property appraiser may grant an application for an exemption that is filed untimely for the 2017 tax roll if:

- The applicant is qualified for the exemption; and
- The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

If the property appraiser denies an application for the 2017 tax roll, the applicant may file a petition with the value adjustment board as set forth in s. 194.011(3), F.S. The petition must be filed on or before the 25th day after the mailing by the property appraiser during the 2017 calendar year of the notice required under s. 194.011(1), F.S. Notwithstanding s. 194.013, F.S., the applicant is not required to pay a filing fee for such petition. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

Section 3 of the bill specifies that the act operates retroactively to January 1, 2017.

Section 4 of the bill provides that it takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

³² A person convicted of a misdemeanor of the first degree may be sentenced by a definite term of imprisonment not exceeding 1 year.

1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{33,34,35}

The mandates provision of section 18, Article VII, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. The prior version of the bill was estimated to reduce local governments' property tax revenues by \$4.5 million per year, beginning in Fiscal Year 2017-2018.

B. Private Sector Impact:

Homestead owners who were totally and permanently disabled in the line of duty as a first responder will pay less property taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³³ FLA. CONST. art. VII, s. 18(d).

³⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 6, 2017).

³⁵ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 6, 2017).

VIII. Statutes Affected:

This bill substantially amends section 196.011 of the Florida Statutes.

This bill creates section 196.102 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 13, 2017:

The committee substitute:

- Deletes the definition of “disabled” from the bill and provides that the physician certificate attesting to totally and permanently disability requires a finding by the physician that the total and permanent disability prevents the applicant from engaging in substantial gainful occupation due to an impairment of the mind or body, and the condition is reasonably expected to continue throughout the life of the applicant;
- Allows an applicant to qualify for the exemption by demonstrating that the applicant qualifies for the totally and permanently disabled exemption in s. 196.101, F.S.;
- Reduces the number of physician certifications from 2 to 1, but requires an applicant who is relying on certifications by a physician and the applicant’s prior employer to qualify for the exemption to also provide an award letter from the Social Security Administration; and
- Deletes from the bill an unnecessary grant of permanent rulemaking authority for the Department of Revenue.

CS/CS by Community Affairs on March 22, 2017:

- Revises the physician’s required certification form to include disclaimers to the taxpayer and physician;
- Removes a provision that extended the deadline for a property appraiser to serve notice setting his or her grounds for denial of the exemption in certain circumstances; and
- Makes a technical change for the act to apply retroactively, rather than prospectively, to the 2017 tax roll.

CS by Governmental Oversight and Accountability on March 6, 2017:

- Leaves s. 196.091(6), F.S.,(exemption for surviving spouse of first responder who dies in the line of duty) where it is in statute and does not move this exemption to newly created s. 196.02, F.S.;
- Adds definition of “cardiac event” and revises definition of “in the line of duty”;
- Revises application requirements to remove Department of Veteran Affairs as an option for providing physician letter;
- Revises application procedures to allow first responder to deliver employer certification to property appraiser;

- Revises procedures for denying exemption by property appraiser and provides additional time to issue notice of denial from date of application; and
- Changes effective date from July 1, 2017, to effective upon becoming a law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
