

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 223 Homestead Exemptions
SPONSOR(S): Ways & Means Committee, Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Darden	Miller
2) Ways & Means Committee	14 Y, 0 N, As CS	Curry	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution requires all property to be assessed at just value (i.e. market value) as of January 1 of each year for purposes of ad valorem taxation. Ad valorem assessments are used to calculate property taxes that fund counties, municipalities, district school boards and special districts. The taxable value against which local governments levy tax rates each year reflects the just value as reduced by applicable exceptions and exemptions allowed by the Florida Constitution. One such exemption is on the first \$25,000 of assessed value of a homestead property, which is exempt from all taxes. A second homestead exemption is on the assessed value between \$50,000 and \$75,000, which is exempt from all taxes other than school district taxes.

Homestead exemption may not be claimed by a person who receives or claims the benefit of an ad valorem tax exemption or tax credit in another state, if permanent residency is required as a basis for granting that ad valorem tax exemption or tax credit.

The bill classifies certain title transfers related to joint tenants with rights of survivorship as transfers that do not constitute a change of ownership. The bill provides that a person receiving a homestead ad valorem tax exemption in Florida and simultaneously receiving, in another state, a similar exemption that requires permanent residency in that state is entitled to the Florida homestead exemption if that person or family unit can demonstrate, to the property appraiser's satisfaction, that they did not apply for the exemption or credit and that they are no longer receiving or will no longer receive the exemption or credit in the other state. The provisions of the bill apply to tax exemptions or tax credits in another state for which a benefit was received after 2009, and are discovered by the property appraiser after July 1, 2020. The bill also provides that an automatic renewal of a tax exemption or tax credit constitutes an application for the exemption or credit if the renewal is subsequent to the initial application.

The bill requires forms to claim homestead exemption that are promulgated by the Department of Revenue to ask the taxpayer whether he or she receives an ad valorem tax exemption or tax credit in another state where permanent residency is required as a basis for the granting of that exemption.

Based on analysis of a similar bill by the Revenue Estimating Conference, staff estimates that the bill will have an indeterminate negative impact on local government revenues.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Tax

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 assessed or “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.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and 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 current use (classified use assessments), which often result in lower assessments. Properties receiving 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

Homestead Exemption

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 tax exemption applicable to all ad valorem tax levies, including levies by school districts.¹¹ An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000. This exemption does not apply to ad valorem taxes levied by school districts.

Homestead exemption may not be claimed by a person who receives or claims the benefit of an ad valorem tax exemption or tax credit in another state, if permanent residency is required as a basis for granting that ad valorem tax exemption or tax credit.¹²

Assessment Limitations

When a homestead owner sells homestead property and purchases a new homestead, he or she is entitled to transfer a portion of the assessment limitation accrued on the prior homestead to his or her

¹ Both real property and tangible personal property are subject to ad valorem 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. Art. VII, s. 4, Fla. Const. 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 Art. VII, s. 1(a), Fla. Const.

⁵ *See* Art. VII, s. 4, Fla. Const.

⁶ S. 193.011(2), F.S.

⁷ Art. VII, s. 4(a), Fla. Const.

⁸ Art. VII, s. 4(b), Fla. Const.

⁹ Art. VII, s. 4(e), Fla. Const.

¹⁰ Art. VII, s. 4(j), Fla. Const.

¹¹ Art. VII, s. 6(a), Fla. Const.

¹² S. 196.031(5), F.S.

new homestead.¹³ Property generally is assessed at just value on January 1 of the year following a “change in ownership.” A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title.¹⁴ However, certain title transfers—a transfer of title to correct an error, a transfer between legal and equitable title, and a transfer when the owner is listed as both a grantor and grantee—do not constitute a change of ownership when the person entitled to the homestead does not change after the transfer of title.

Improperly Granted Homestead Exemptions

Florida provides several property tax exemptions for homestead property.¹⁵ Since Florida’s homestead tax exemptions require that the property owner use the homestead property as a permanent residence, a property owner can only have one exempt homestead.

If a property appraiser determines that for any year or years within the prior 10 years a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser must send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.¹⁶ The property owner has 30 days to pay the taxes owed, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. If not paid within 30 days of notice, the property appraiser may file a tax lien.¹⁷ The tax lien remains on the property until it is paid or until it expires after 20 years.¹⁸

If a homestead exemption is improperly granted due to a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalties and interest.¹⁹

The property appraiser may become aware of a property owner having a homestead within Florida and a homestead exemption in another state when the property owner dies and the estate of the decedent is administered in another state because the decedent allegedly was a resident of that other state.²⁰ In such cases, property appraisers are required to use the lien process described above, unless the circuit court having jurisdiction over the ancillary administration of the estate in Florida determines that the decedent was a resident of Florida for the years in question.²¹

Effect of Proposed Changes

The bill classifies certain transfers of title related to joint tenants with rights of survivorship as transfers that do not constitute a change of ownership. A title transfer when the owner entitled to the homestead exemption is listed as both a grantor and grantee and one or more other individuals, all of whom hold title as joint tenants with rights of survivorship with the owner, are named only as grantors and are removed from the title will not constitute a change of ownership. The bill also provides that the following transfers of title will not constitute as a change in ownership. Transfers of title that occur with respect to property where:

- Multiple owners hold title as joint tenants with rights of survivorship;
- One or more owners were entitled to and received the homestead exemption on the property;
- Death of one or more owners occurs; and
- Subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

¹³ See Fla. Const. Art. VII, s. 4(d)(8).

¹⁴ Section 193.155(3)(a), F.S.

¹⁵ See, e.g., ss. 196.031, 196.071, 196.075, 196.081, and 196.091, F.S.

¹⁶ See ss. 196.011(9)(a), 196.075, and 196.161(1)(b), F.S.

¹⁷ *Id.*

¹⁸ S. 95.091(1)(b), F.S.

¹⁹ S. 196.161, F.S.

²⁰ See s. 196.161(1)(a), F.S.

²¹ *Id.*

The bill provides that a person or family unit receiving a homestead ad valorem tax exemption in Florida and simultaneously receiving, in another state, a similar exemption requiring permanent residency in that state is entitled to the Florida homestead exemption if that person or family unit can demonstrate, to the property appraiser's satisfaction, that they did not apply for the exemption or credit and that they are no longer receiving or will no longer receive the exemption or credit in the other state.²² The provisions of the bill relating to homestead exemption disqualification apply to tax exemptions or tax credits in another state for which a benefit was received after 2009, and are discovered by the property appraiser after July 1, 2020. The bill also provides that an automatic renewal of a tax exemption or tax credit constitutes an application for the exemption or credit if the renewal is subsequent to the initial application.

The bill requires forms to claim homestead exemption that are promulgated by the Department of Revenue to ask the taxpayer whether he or she receives an ad valorem tax exemption or tax credit in another state where permanent residency is required as a basis for the granting of that exemption.

The amendments made by the bill apply to tax years beginning on or after January 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 193.155, F.S., provides exceptions related to change of ownership for purposes of certain homestead assessment limitations.

Section 2: Amends s. 196.031, F.S., concerning eligibility for homestead exemption.

Section 3: Creates an undesignated section of law to provide that the bill's amendments to s. 196.031, F.S., apply to tax exemptions and credits received after 2009 and discovered by the property appraiser after July 1, 2020.

Section 4: Amends s. 196.121, F.S., concerning homestead exemption forms.

Section 5: Provides an effective date of July 1, 2020.

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:

Based on analysis of a similar bill by the Revenue Estimating Conference, staff estimates that the bill will have an indeterminate negative impact on local government revenues.

²² This provision may expand the number of property owners eligible for homestead exemption. *See Fitts v. Furst*, 44 Fla. L. Weekly D2314, at *6, n. 5 (Fla. 2nd DCA Sept. 13, 2019) (stating similar language in HB 1151 (2019), if it had been current law when the tax liability arose, would have enabled the plaintiffs in that case to show they were not “person[s] who [were] not entitled to a homestead exemption [but] w[ere] granted a homestead exemption.”)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the ability of local governments to collect property taxes owed from prior years when a homestead exemption was being used in Florida and a similar tax benefit was being used in another state. 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.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2020, the Ways and Means committee adopted a strike-all amendment as amended.

The amendment classifies certain title transfers related to joint tenants with rights of survivorship as transfers that do not constitute a change of ownership to eliminate the burden of the taxpayer having to reapply for homestead portability. The amendment provides that a title transfer when the owner entitled to the homestead exemption is listed as both a grantor and grantee and one or more other individuals, all of whom hold title as joint tenants with rights of survivorship with the owner, are named only as grantors and are removed from the title will not constitute a change of ownership. The amendment also provides that transfers of title that occur with respect to property where:

- multiple owners hold title as joint tenants with rights of survivorship;
- one or more owners were entitled to and received the homestead exemption on the property;
- death of one or more owners occurs; and
- subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption, will not constitute as a change of ownership.

The amendment clears up ambiguity in the bill by clarifying when the person or family unit must demonstrate to the property appraiser that they are entitled to the Florida homestead exemption when the person or family unit is simultaneously receiving a similar benefit in another state, and requires the person or family unit to demonstrate that they have or will relinquish the tax exemption or credit in the other state. Specifically, the amendment provides that, "upon determination by the property appraiser," that the person or family unit is simultaneously receiving or has received, in Florida and another state, the benefit of an ad valorem tax exemption or tax credit where permanent residency is required, that the person or family unit is entitled to receive the Florida homestead exemption if that person or family unit can demonstrate, to the

property appraiser's satisfaction, that they did not apply for the exemption or credit and that they "are no longer receiving" or "will no longer receive" the exemption or credit in the other state.

The amendment also clarifies that an automatic renewal of a tax exemption or tax credit constitutes an application for the exemption or credit if the renewal is subsequent to the initial application. Further, the amendment clarifies applicability by specifying that the provisions of the bill relating to homestead exemption disqualification apply to tax exemptions or tax credits in another state for which a benefit was received after 2009, and are discovered by the property appraiser after July 1, 2020.

This analysis is drawn to the bill as amended by the Ways and Means Committee.