

**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: CS/SB 514

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Homestead Exemptions

DATE: February 12, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 514 allows a person or family unit to retain a homestead exemption in Florida when they inadvertently also received an exemption in another state, under certain circumstances.

Current law provides that a property owner who is receiving or claiming an ad valorem tax exemption in another state that is conditioned upon permanent residency in that state may not receive the ad valorem homestead exemption in Florida. This provision operates regardless of whether the property owner applied for the exemption in the other state or was granted the exemption without applying for it.

The bill applies to circumstances discovered by a property appraiser after July 1, 2020.

The Revenue Estimating Conference has determined that the bill will reduce local property taxes by an indeterminate amount beginning in Fiscal Year 2020-2021.

The bill takes effect July 1, 2020.

## 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 assessed or “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and 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> on real estate or tangible personal property, 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 may 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>

### Homestead Exemption

Every person<sup>11</sup> 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.<sup>12</sup> An additional

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<sup>1</sup> 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.

<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).

<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> FLA. CONST. art VII, s. 6(b), appears to equate a person with a family unit: “Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.

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

\$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.<sup>13</sup> This exemption does not apply to ad valorem taxes levied by school districts.

### **Save Our Homes Assessment Limitation and Portability**

In 1992, Florida voters approved the Save Our Homes amendment to the Florida Constitution.<sup>14</sup> The Save Our Homes assessment limitation limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index.<sup>15</sup> The accumulated difference between the assessed value and the just value is the Save Our Homes benefit.

Due to the effects of the homestead exemption and the Save Our Homes assessment limitation, many homestead properties enjoy significant tax savings.

### **Only One Homestead Exemption**

Since Florida's homestead exemption requires that the property owner use the homestead property as a permanent residence, a property owner can only have one homestead exemption.

For persons that own property outside Florida, Florida law provides that a person who is receiving or claiming an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that exemption or tax credit is not entitled to a homestead exemption in Florida.<sup>16</sup>

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.<sup>17</sup> 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 must file a tax lien.<sup>18</sup> The tax lien remains on the property until it is paid or until it expires after 20 years.<sup>19</sup> The lien process applies whether or not the taxpayer applied for the residency-based exemption in the other state.

If a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption is not assessed penalty and interest.<sup>20</sup>

If a property appraiser determines that a person claiming Florida homestead also has a residency-based exemption in another state, Florida law does not provide any exception to the requirement

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<sup>13</sup> *Id.*

<sup>14</sup> FLA. CONST. art. VII, s. 4(d). The Florida Legislature implemented the Save Our Homes amendment in s. 193.155, F.S.

<sup>15</sup> FLA. CONST. art. VII, s. 4(d).

<sup>16</sup> Section 196.031(5), F.S.

<sup>17</sup> See ss. 196.011(9)(a), 196.075, and 196.161(1)(b), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 95.091(1)(b), F.S.

<sup>20</sup> Section 196.161(1)(b), F.S.

that the property appraiser assess the property owner for the tax benefits of claiming homestead in Florida. Situations have arisen wherein Florida homestead owners have been assessed back taxes because of a residency-based tax benefit they received in another state, but for which they never applied.<sup>21</sup> While sympathetic to taxpayers in this situation, courts have concluded that Florida law requires the property appraiser to make the assessment.<sup>22</sup>

### **Department of Revenue Homestead Exemption Forms**

Section 196.121, F.S., directs the Department of Revenue to provide, by electronic means or other methods designated by the department, filing forms for taxpayers claiming to be entitled to a homestead exemption. The forms require the taxpayer to furnish certain information to the property appraiser for the purpose of determining that the taxpayer is a permanent resident.

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

**Section 1** amends s. 196.031, F.S., to specify that a person or family unit that receives or claims an ad valorem tax exemption or tax credit in another state where permanent residency is required as a basis for granting that exemption or credit may retain the Florida homestead exemption if the person or family unit demonstrates to the satisfaction of the property appraiser that the person or family unit did not apply for the exemption or credit in the other state and is no longer receiving or will no longer receive the tax exemption or tax credit in the other state. An automatic renewal of a tax exemption or tax credit in the other state constitutes an application if the renewal is subsequent to an initial application by the person or family unit.

**Section 2** creates an undesignated section of law to provide that the bill's amendment to s. 196.031, F.S., applies to ad valorem tax exemptions or tax credits in another state for which a benefit was received after 2009 and which are discovered by a property appraiser after July 1, 2020.

**Section 3** amends s. 196.121, F.S., to authorize the Department of Revenue to include on its forms for homestead exemptions the requirement that the homestead exemption applicant provide information about tax exemptions or tax credits in another state where permanent residency is required as a basis for the tax exemption or tax credit.

**Section 4** provides an effective date of July 1, 2020.

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

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

Article VII, Subsection (b) of section 18 of the State 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,

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<sup>21</sup> See *Fitts v. Furst*, 283 So. 3d 833 (Fla. 2<sup>nd</sup> DCA 2019).

<sup>22</sup> *Id.* at 841-842.

1989. However, the mandate requirements do not apply to laws having an insignificant impact,<sup>23, 24</sup> which is \$2.1 million or less for Fiscal Year 2019-2020.<sup>25</sup> The Revenue Estimating Conference has estimated that the bill will reduce local revenues by an indeterminate amount. If the actual reduction exceeds \$2.1 million, the mandates provisions may apply.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that the bill will reduce local property taxes by an indeterminate amount beginning in Fiscal Year 2020-2021.<sup>26</sup>

**B. Private Sector Impact:**

A property owner that has been found to have a Florida homestead exemption and a similar exemption or credit in another state may continue to qualify for the homestead exemption in Florida if she or he did not apply for the tax exemption or tax credit in the other state and relinquishes the exemption or credit in the other state.

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<sup>23</sup> FLA. CONST. art. VII, s. 18(d).

<sup>24</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 09, 2020).

<sup>25</sup> Based on the Demographic Estimating Conference's population adopted on December 3, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 09, 2020).

<sup>26</sup> Office of Economic and Demographic Research, The Florida Legislature, *Homestead Disqualification: CS/SB 514* (Nov. 12, 2019), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/\\_pdf/page1-12.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page1-12.pdf) (last visited Feb. 10, 2020).

C. **Government Sector Impact:**

According to the Florida Department of Revenue, if the bill passes, the department would need to amend Form DR-501 and Rule 12D-16.002, F.A.C.<sup>27</sup>

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 196.031 and 196.121.

The bill creates an undesignated section of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on January 21, 2020:**

- Establishes that a person or family unit retaining a Florida homestead exemption must no longer be receiving or will no longer be receiving the tax exemption or tax credit in another state.
- Provides that an automatic renewal of a tax exemption or tax credit constitutes an application if the renewal is subsequent to the initial application.
- Provides that the bill's provisions apply to tax exemption and credit circumstances discovered by a property appraiser after July 1, 2020.

B. **Amendments:**

None.

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

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<sup>27</sup> Florida Department of Revenue, *HB 223/SB 514 Agency Analysis* (November 5, 2019) (on file with the Senate Committee on Finance and Tax).