

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1345 Homestead Tax Exemptions
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, McFarland
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	16 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee			
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. Property assessments are used to calculate ad valorem taxes that fund counties, municipalities, school districts, 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.

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. 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 all or substantially all of a homestead property is rented out by the property owner, the property owner is considered to have abandoned the property as a homestead.

The bill reduces the interest due on taxes from an improperly claimed homestead tax exemption, from 15 percent per annum plus a penalty equal to 50 percent of the taxes due, to the interest rate set in s. 213.235, F.S., plus a penalty equal to the lesser of three times that rate or 50 percent. The bill also clarifies that renting a portion of a dwelling claimed as homestead property while physically occupying the dwelling does not constitute abandonment as a homestead as a whole or in part.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Ad Valorem Taxation

Ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts.¹ The tax is based on the taxable value of property as of January 1 of each year.² The property appraiser annually determines the assessed or “just value”³ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”⁴ The property appraiser then submits the certified assessment roll to the tax collector.⁵ The tax collector sends out a tax notice to each taxpayer stating the amount of current taxes due within 20 business days after receiving the certified ad valorem tax roll.⁶ All taxes are due and payable on November 1 of each year and become delinquent on the following April 1.⁷

Unless expressly exempted from taxation, all real and personal property and leasehold interests in the state are subject to taxation.⁸ The Legislature is without authority to grant an exemption from taxes without a constitutional basis⁹ and any modifications to existing ad valorem tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹⁰

Homestead Exemption

Every person having legal and equitable title to real estate 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 additional exemption does not apply to ad valorem taxes levied by school districts.

Each person or organization who meets the criteria for an ad valorem tax exemption may claim the exemption if the claimant held legal title to the real or personal property subject to the exemption on January 1.¹² The application for exemption must be filed with the property appraiser on or before March 1 and failure to make an application constitutes a waiver of the exemption for that year. The application must list and describe the property for which the exemption is being claimed and certify the ownership and use of the property. The claimant must reapply for the exemption on an annual basis, unless the property appraiser (subject to approval by a vote of the governing body of the county) has waived the

¹ The Florida Constitution prohibits the state from levying ad valorem taxes. Art. VII, s. 1(a), Fla. Const.

² Both real property and tangible personal property are subject to ad valorem tax. S. 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. S. 192.001(11)(d), F.S., defines the term “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.

³ 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: *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965).

⁴ See s. 192.001(2) and (16), F.S. The Florida Constitution limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized. Art. VII, s. 4, Fla. Const.

⁵ S. 197.322(1), F.S.

⁶ S. 197.322(3), F.S.

⁷ S. 197.333, F.S.

⁸ S. 196.001, F.S.; see also *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994), noting exemptions are strictly construed against the party claiming them.

⁹ *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978).

¹⁰ *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).

¹¹ Art. VII, s. 6(a), Fla. Const.

¹² S. 196.011(1)(a), F.S.

annual application requirement for property after an initial application is made and the exemption granted.¹³

Improperly Granted Homestead Exemptions

Florida provides several property tax exemptions for homestead property.¹⁴ 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.¹⁵ 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.¹⁶ The tax lien remains on the property until it is paid or until it expires after 20 years.¹⁷

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 shall not be assessed penalty and interest.¹⁸

Interest on Tax Deficiencies

The interest rate applicable to any tax payment deficiency arising on or after January 1, 2000, is the lesser of the rate established by the executive director of the Department of Revenue (DOR) pursuant to s. 213.235(2), F.S., or the particular rate specifically provided by statute for that tax.¹⁹ The executive director must set the rate according to a statutory formula that establishes the rate as the adjusted prime rate charged by banks, rounded to the nearest full percent, plus four percentage points.²⁰ This rate is adjusted each calendar year based on the prime rate as of March 31 and September 30. If the rate is adjusted, the adjustments take effect on July 1 of the same calendar year or January 1 of the following calendar year, respectively.²¹

Rental of Homestead Property

The rental of all or substantially all of a homestead property is considered abandonment of the homestead.²² The property is considered abandoned for homestead purposes until it is physically occupied by the owner. The rental of the homestead is not considered abandonment for the present tax year unless the property has been rented for more than 30 days per calendar year for two consecutive years. This provision does not apply to homestead property owned by a member of the armed forces.²³

The application of s. 196.061, F.S. has been the subject of multiple court case in recent years.

In *Karayiannakis v. Nikolits*, an applicant claimed a homestead exemption for a two-story apartment building containing five units, one of which was occupied by the applicant.²⁴ The property appraiser measured the dimensions of the applicant's residence, found it represented approximately 37 percent of the building, and determined only that portion was eligible for homestead exemption. The court found

¹³ Ss. 196.011(5), (9)(a), F.S.

¹⁴ See, e.g., ss. 196.031, 196.071, 196.075, 196.081, and 196.091, F.S.

¹⁵ Ss. 196.011(9)(a), 196.075(9), and 196.161(1)(b), F.S.

¹⁶ *Id.*

¹⁷ S. 95.091(1)(b), F.S.

¹⁸ Ss. 196.011(9)(a), 196.075(9), and 196.161(1)(b), F.S.

¹⁹ S. 213.235(1), F.S.

²⁰ S. 213.235(2), F.S.

²¹ S. 213.235(3), F.S.

²² S. 196.061(1), F.S.

²³ S. 196.061(2), F.S.

²⁴ *Karayiannakis v. Nikolits*, 23 So.3d 844, 845 (Fla. 4th DCA 2009).

that such a division was proper, as the homestead does not include any portion of the property used for commercial purposes.²⁵

In *Furst v. Rebholz*, a property appraiser received a complaint that the owner of a single-family home was renting two bedrooms to tenants.²⁶ One of the bedrooms had been rented by the same tenant since 1996, while the other bedroom had been rented sporadically during that same period. The property appraiser retroactively revoked the owner's homestead property tax and claimed the rental of the two bedrooms represented a commercial use that rendered 15 percent of the residence ineligible for homestead exemption. The court found the property appraiser was not authorized to subdivide the owner's homestead property into residential and commercial portions.²⁷ The court distinguished this case from *Karayiannakis* as follows:

The only issue before the Fourth District in *Karayiannakis* was whether the real property surrounding the apartment building was contiguous to *Karayiannakis*' residence or part of the commercial purpose of running an apartment building. *Karayiannakis* herself conceded that the commercial portion of the apartment building could be severed from her own unit for taxation purposes, but her one unit—where she maintained her permanent residence—was never itself divided. *Karayiannakis* applied for and was granted the constitutional homestead tax exemption on the entirety of her permanent residence. As such, Appellants are incorrect in arguing that the *Karayiannakis* opinion stands for the proposition that a homeowner's permanent residence may be divided into exempt homestead and nonexempt commercial-use property.²⁸

The court also noted that while neither party raised the issue of whether the owner was renting “all or substantially all of the property,” that language suggests the purpose of considering rental as abandonment of the homestead is because an owner who rents all or substantially all of a dwelling is not maintaining that dwelling as their permanent residence.²⁹

Furst v. Rebholz is currently pending review before the Florida Supreme Court.³⁰

Effect of Proposed Changes

The bill reduces the interest due on taxes from an improperly claimed homestead tax exemption from 15 percent per annum plus a penalty equal to 50 percent of the taxes due to the interest rate set in s. 213.235, F.S., plus a penalty equal to the lesser of three times that rate or 50 percent.

The bill also clarifies that renting a portion of a dwelling claimed as homestead property while physically occupying the dwelling does not constitute abandonment as a homestead as a whole or in part.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.011, F.S., concerning the annual application required for a homestead exemption.

Section 2: Amends s. 196.061, F.S., concerning the rental of homestead property.

Section 3: Amends s. 196.075, F.S., concerning additional homestead exemption for persons 65 or older.

Section 4: Amends s. 196.161, F.S., concerning liens imposed on the property of a person claiming homestead exemption although he or she is not a permanent resident.

Section 5: Providing an effective date of July 1, 2022.

²⁵ *Id.* at 846 (citing ss. 196.031(5) and 196.012(13), F.S.).

²⁶ *Furst v. Rebholz*, 302 So.3d 423, 426 (Fla. 2nd DCA 2020).

²⁷ *Id.* at 429.

²⁸ *Id.* at 431-42.

²⁹ *Id.* at 432.

³⁰ *Furst v. Rebholz*, 2022 WL 130021 (Fla. Jan. 14, 2022) (accepting jurisdiction).

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:

None.

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:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue will need to modify existing rules to reflect the changes made by the bill.³¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revises the applicable interest and penalties due for improperly claiming the additional homestead exemption for low-income persons aged 65 or older and clarifies that renting a portion of an occupied homestead does not constitute abandonment in whole or in part of the homestead.

³¹ Fla. Dept. of Revenue, Agency Analysis of 2020 House Bill 1345, p. 3 (Jan. 18, 2022).

This analysis is drafted to the committee substitute adopted by the Local Administration & Veterans Affairs Subcommittee.