

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: January 26, 1998 Revised: 2/3/98 \_\_\_\_\_

Subject: Homestead Tax Exemption

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

The joint resolution amends the State Constitution to allow the enactment of laws permitting counties and municipalities to grant an additional homestead tax exemption of up to \$25,000 to persons at least 65 years old whose household income does not exceed \$20,000.

This joint resolution creates subsection (f) of Article VII, Section 6, Florida Constitution.

**II. Present Situation:**

Article VII, Section 4 of the State Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value. Section 4 provides exceptions for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property which is held as inventory may be assessed at a specified percentage of its value or totally exempted.

Article VII, Section 6, of the State Constitution authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another legally or naturally dependent upon the owner. The value of the homestead exemption is currently \$25,000 of the assessed value of the real estate. The State Constitution requires that this provision be implemented pursuant to general law.

Section 196.031, F.S., primarily implements the homestead exemption, although other statutory sections provide specific procedures and conditions, i.e., procedures for application for the

exemption (s. 196.011, F.S.), the extent of the exemption (s. 196.041, F.S.), and the effect of rental of homestead property. Additionally, three sections of chapter 196 provide for an exemption from taxation of the homesteads of the following classes of individuals: Section 196.081, F.S., exempts the homesteads of certain permanently and totally disabled veterans and surviving spouses of certain veterans; section 196.091, F.S., exempts the homesteads of disabled veterans confined to wheelchairs; and section 196.101, F.S., exempts the homesteads of quadriplegics.

#### Homestead Property Tax Deferral Act

Section 197.242, F.S., establishes the “Homestead Property Tax Deferral Act.” Section 197.252, F.S., implements the act and provides for deferral of ad valorem taxes for qualified individuals. Ad valorem tax deferral is available to any homeowner whose tax burden is greater than five percent of household income, and homeowners over 70 years of age whose tax burden is greater than three percent of household income. Social security income is not included in this calculation. Participation in the tax deferral plan varies by county.

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

The joint resolution contains two parts. The first part creates subsection (f) of Article VII, Section 6 of the State Constitution to authorize the Legislature to enact general laws allowing counties or municipalities to grant an additional homestead exemption of up to \$25,000 to persons 65 years old or older whose total household income does not exceed \$20,000. The resolution provides for local enactment by ordinance and requires that the ordinance provide for periodic adjustment of the income limitation to reflect changes in the cost of living.

The second part provides for placement on the ballot of proposed language to implement the additional homestead exemption.

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

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

The joint resolution allows counties the option to grant an additional exemption. As such, the resolution does not fall within the purview of Article VII, Section 18, Fla. Const.

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

None.

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

None.

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#### D. Other Constitutional Issues:

Article XI, Section 1 of the State Constitution requires a three-fifths vote of the membership of each house of the Legislature in order to enact the provisions of a joint resolution.

The joint resolution may conflict with Section 6(b) of Article VII, which provides, “Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit.” As the resolution provides for an *additional homestead exemption* for a particular class of individuals, it appears to violate this clause of the State Constitution. It should be noted that the exemptions provided for in ss. 196.081, 196.091, and 196.101, F.S., are separate from the general homestead exemption provided for in 196.031, F.S. The classes of persons defined in those statutory sections receive the exemption as an *alternative* to the general homestead exemption, not *in addition to* the general homestead exemption.

If the resolution is implemented statutorily as an *increased exemption* of up to \$25,000, it may escape a challenge based on conflict with section 6(b). However, an increased exemption for the class may be challenged as a violation of the equal protection clauses of either or both the state and federal constitutions. In *Osterndorf v. Turner*, 426 So.2d 540 (Fla. 1982), the Florida Supreme Court struck down durational residency requirements for the \$25,000 homestead exemption as violative of the equal protection clause. In explanation, the Court stated, “It is not a legitimate state purpose to reward certain citizens for past contributions to the detriment of other citizens.” *Id.* However, both the Florida and U.S. Supreme Courts have upheld tax exemption disparities as long as there is a “rational basis” for selecting the particular class for special treatment. For example, in *Shevin v. Kahn*, 273 So.2d 72 (Fla. 1973); *aff’d*, 416 U.S. 351, the Florida Supreme Court upheld the constitutionality of a \$500 homestead tax exemption for widows as having a “‘fair and substantial relation’ to the ability of women property owners to pay taxes on property of even minimal value.” *Id.*

Finally, the local option nature of the joint resolution generally conflicts with the constitutional principle of uniformity in taxation as stated in Section 2, Article VII of the State Constitution. Section 6 specifically provides for implementation of homestead exemptions by general law. In contrast, Section 3 limits local option programs for tax exemptions to those specifically provided for in the constitution: economic development and historic preservation. To the extent that the local option provision creates situations where property owners across the state, and especially within the same political jurisdiction, are denied that same benefit as other similarly situated persons, there may be a violation of their federal and state equal protection rights. To overcome such a challenge, the classification would have to survive the “rational basis” test.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

See Government Sector Impact, below, for the total fiscal impact on local governments.

The amount of taxes lost in each county varies depending upon the county's population characteristics and operating millage; however, the amounts range from a low of \$16,564 in Liberty County to a high of \$8,012,083 in Broward County. While some counties may have the option of raising their millage rates to compensate for such losses, others are already operating at the maximum allowable millage rate. Inevitably, local governments will shift the ad valorem taxation burden to households which do not qualify for the exemption.

**B. Private Sector Impact:**

Qualified elderly homeowners will benefit from reduced ad valorem taxes.

**C. Government Sector Impact:**

Local Governments - The Revenue Estimating Conference estimates that the total revenue loss for local governments is \$91.2 million in fiscal year 2000-01.

State - The Division of Elections estimates that the cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 1998 general election is \$35,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

All homesteads are shielded from rising tax assessments by the Save Our Homes initiative which was enacted in 1995. That initiative resulted in an amendment to the Article VII, Section 4, of the State Constitution which caps the annual assessment of homestead property to the lesser of either 3 percent of the prior year's assessment, or the percent change in the consumer price index.

According to the National Conference of State Legislatures, four states currently provide, by general law, for local option ad valorem exemptions or deferrals for seniors. Delaware authorizes municipalities to exempt, by local ordinance, the realty of persons 65 or older. Virginia authorizes local governments to exempt the homesteads of persons 65 or older whose income does not exceed the greater of either \$30,000 or the HUD income limit by family size for qualifying for federal housing assistance, excluding the first \$6,500 of any relative of the owner, other than a spouse, and whose combined net worth does not exceed \$75,000. New York authorizes cities to

grant persons 65 or older an exemption not to exceed 50 percent of the assessed value of homestead property, and allows the municipality to set an income limitation between \$3,000 and \$17,500. Utah authorizes counties to defer or abate up to \$300 (but not more than 50 percent of the total tax assessed for the current year) of the property taxes of persons age 65 or older whose total household income does not exceed the maximum income certified for the homeowner's property tax credit.

**VIII. Amendments:**

#1 by Community Affairs:

Clarifies that an additional homestead exemption may be granted in the case of a qualified homeowner who is at least 65 years old and whose income does not exceed \$20,000. The amendment addresses the constitutional issue raised in paragraph two in Section D. of the analysis.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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