

**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 Community Affairs

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BILL: SB 562

INTRODUCER: Senator Diaz

SUBJECT: Homestead Exemptions

DATE: February 25, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 562 is the implementing bill for SJR 344 which proposes an amendment to the Florida Constitution to provide an exemption from school district levies to a person who is 65 years of age or older, who has legal or equitable title to homestead property, and who has maintained permanent residence on the homestead for at least 25 years. The proposed exemption would be allowable in addition to any other homestead exemption.

**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.

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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.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and 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 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>

### **Property Tax Exemptions**

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>11</sup>

#### ***Statewide 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.<sup>12</sup> 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.

#### ***Additional Homestead Exemptions for Certain Persons 65 years of Age or Older***

The Florida Constitution also authorizes the Legislature to allow counties and municipalities to grant two additional homestead property tax exemptions for persons aged 65 years or over whose household income does not exceed \$20,000 (low-income seniors).<sup>13</sup> The income limitation is adjusted each year according to changes in the consumer price index. The 2019 household income threshold for these exemptions is \$30,174.<sup>14</sup> The exemptions require the owner to hold legal or equitable title to the real estate and maintain thereon their permanent residence.<sup>15</sup> The two additional exemptions are:

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<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> *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

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

<sup>13</sup> FLA. CONST. art. VII, s. 6(d)(1) and (2).

<sup>14</sup> Florida Department of Revenue, *Two Additional Homestead Exemptions for Persons 65 and Older* (Revised January 2019) available at <http://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf> (last visited Feb. 20, 2019).

<sup>15</sup> Section 196.075(8), F.S., provides that a spouse may receive the amount of either additional homestead exemption if title is held jointly with right of survivorship.

*\$50,000 Additional Exemption.* Since 1999, counties and municipalities have been authorized to grant an additional homestead exemption not exceeding \$50,000 for low-income seniors.<sup>16</sup>

*Long-term, Low-Income Seniors with Homesteads under \$250,000.* Since 2013, counties and municipalities have been authorized to also exempt the entire assessed value of a low-income senior's homestead with a just value less than \$250,000 if the low-income senior has maintained that homestead for not less than 25 years.<sup>17</sup> Taxpayers who initially receive the exemption are denied the exemption in a later year if the just value of their homestead exceeds \$250,000.

A county or municipality may grant either or both of the additional exemptions and must do so by ordinance pursuant to the procedures prescribed in chapters 125 and 166, F.S.<sup>18</sup> The ordinance must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.<sup>19</sup>

For purposes of the exemption, "household income" means "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."<sup>20</sup> The term "household" means "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling."<sup>21</sup>

### ***Improperly Granted Homestead Exemptions***

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons improperly granted a homestead exemption. Section 196.161(1)(b), F.S., provides that if the property appraiser determines that a person was not entitled to a homestead exemption for any time within the prior 10 years, then the property appraiser must record a tax lien against the property. In addition to the property being liable for all taxes exempt, there is a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, penalties and interest are not due when the exemption was improperly granted as a result of a clerical error or an omission by the property appraiser.

### ***School District Ad Valorem Taxes***

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real estate.<sup>22</sup> The levy of nonvoted ad valorem tax levies for school purposes is restricted to ten mills.<sup>23</sup> The voted levies, which are constitutionally

<sup>16</sup> FLA. CONST. art. VII, s. 6(d)(1) and s. 196.075(2), F.S.

<sup>17</sup> FLA. CONST. art. VII, s. 6(d)(2).

<sup>18</sup> Section 196.075(4)(a), F.S.

<sup>19</sup> Because the exemption applies only to taxes levied by the county or municipality that enacts the exemption, it does not apply to taxes levied by school districts or other taxing authorities. *See* s. 196.075, F.S.

<sup>20</sup> Section 196.075(1)(b), F.S.

<sup>21</sup> Section 196.075(1)(a), F.S.

<sup>22</sup> FLA. CONST. art. VII, s. 1(a).

<sup>23</sup> FLA. CONST. art. VII, s. 9(b). Counties, municipalities, and school districts may levy taxes in excess of the ten-mill limit to pay bonds or for periods no longer than two years when authorized by a vote of the electorate, pursuant to FLA. CONST. art. VII, s. 9(b). In addition, statutorily authorized voted millage lasting no more than four years may be levied under the ten-mill limitation, pursuant to s. 1011.71(9), F.S.

available to counties and municipalities as well as school districts, do not count toward the ten-mill cap. School district millage rates are composed of five categories:<sup>24</sup>

- Nonvoted required school operating millage necessary to meet Required Local Effort (RLE) is determined by the Commissioner of Education and set by the school board. For operating purposes, it is imposed pursuant to s. 1011.60(6), F.S., and reflects the minimum financial effort required for support of the Florida Education Finance Program (FEFP) as prescribed in the current year's General Appropriations Act.
- Nonvoted discretionary school operating millage is the rate set by the school board for operating purposes other than the RLE millage rate imposed pursuant to s. 1011.60(6), F.S., and the nonvoted capital improvement millage rate imposed pursuant to s. 1011.71(2), F.S. The Legislature annually prescribes in the General Appropriations Act the maximum amount of millage a district may levy.<sup>25</sup>
- Nonvoted district school capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 1011.71(2), F.S. General law limits the maximum rate at 1.5 mills.<sup>26</sup> However, a district school board is authorized to levy an additional millage of up to 0.25 mills for fixed capital outlay under certain circumstances.<sup>27</sup>
- Voted district school operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
- Voted district school debt service millage is the rate set by the school board as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.

The Florida Department of Education's *2017-18 Funding for Florida School Districts* provides an overview of school district funding and discussion of school district millages.<sup>28</sup> According to the report, school districts in Fiscal Year 2015-16 received 40.39 percent of their financial support from state sources, 48.00 percent from local sources (including the RLE portion of the FEFP) and 11.61 percent from federal sources.<sup>29</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 196.076, F.S., to provide an exemption from school district levies for any real estate used as a homestead by a person age 65 or older who has legal or equitable title to the property, and who has maintained permanent residence on the property for at least 25 years. This homestead exemption may be received in addition to the statewide homestead exemption provided under s. 196.031, F.S. A right of survivorship provision permits a spouse to receive the additional homestead exemption if title is held jointly.

Consequences for an exemption improperly granted are provided in a manner similar to those found in s. 196.161, F.S., for improperly granted statewide homestead exemptions. Specifically, if a property appraiser determines that a person received an unentitled exemption within the

<sup>24</sup> Section 200.001(3), F.S.

<sup>25</sup> Section 1011.71(1), F.S.

<sup>26</sup> Section 1011.71(2), F.S.

<sup>27</sup> Section 1011.71(3), F.S.

<sup>28</sup> Florida Department of Education, *2017-18 Funding for Florida School Districts*, available at <http://fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> (last visited Feb.20, 2019).

<sup>29</sup> *Id.* at 2.

previous 10 years, the property appraiser must serve a notice of tax lien against any property owned by that person in the county. Any of the taxpayer's property in the state is subject to taxes improperly exempted, plus a penalty of 50 percent of the unpaid taxes for each year and a 15 percent interest rate per year. Improper exemptions caused by a property appraiser's clerical error or omission are not subject to the penalty and interest. An owner has 30 days to pay the taxes, penalties and interest before a lien may be filed subject to the procedures in s. 196.161(3), F.S.

**Section 2** provides that the exemption created by the bill first applies to the 2021 property tax roll.

**Section 3** provides that the bill shall take effect on the effective date of the amendment to the State Constitution proposed by SJR 344 or a similar joint resolution approved at the general election held in November 2020.

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

A. Municipality/County Mandates Restrictions:

None.

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 not yet determined the impact of SJR 344.

B. Private Sector Impact:

If the proposed amendment in SJR 344 is approved by a 60 percent vote of the electors, qualifying homestead property owners will not be subject to school district levies.

**C. Government Sector Impact:**

If the proposed amendment in SJR 344 is approved by a 60 percent vote of the electors, local school districts will receive less ad valorem tax revenue.

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue would need to amend homestead exemption and tax roll recapitulation Forms DR-501, DR-490, DR-489V, DR-489EB, DR-403V and DR-403EB and Rules 12D-7.0142, 12D-16.002, F.A.C. However, the department will implement those changes with existing fiscal resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the section 196.076 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.)

None.

**B. Amendments:**

None.