

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 132

INTRODUCER: Senator Hutson

SUBJECT: Rental of Homestead Property

DATE: February 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

Section 196.061, F.S., specifies that a homestead property owner may abandon homestead property and lose homestead property tax exemptions by renting "all or substantially all of a dwelling." SB 132 amends this section of law to provide that renting a portion of homestead property does not constitute abandonment if the homestead property owner continues to occupy the dwelling physically.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

The bill takes effect July 1, 2021.

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 the 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

¹ 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.

² 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).

limitations, and exemptions to determine the property's "taxable value."³ In November of each year, tax bills are mailed 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 on real estate or tangible personal property. It limits the Legislature's authority to provide 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 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;⁷ land used for conservation purposes;⁸ historical properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Homestead Tax Exemption

Every person¹¹ 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.¹² An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.¹³ 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.¹⁴ The Save Our Homes assessment limitation limits the amount that a homestead property's assessed value may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index.¹⁵ The accumulated difference between the assessed value and the just value is the Save Our Homes benefit.

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ 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.

¹² FLA. CONST. art. VII, s. 6(a).

¹³ *Id.*

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

¹⁵ FLA. CONST. art. VII, s. 4(d).

The Save Our Homes assessment limitation is considered portable because a homestead property owner may transfer this benefit when moving from one homestead property to another.¹⁶

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

Commercial Use of Homestead Property

Section 196.012(13), F.S., provides that "[r]eal estate used and owned as a homestead means real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion thereof used for commercial purposes, with the title of such property being recorded in the official records of the county in which the property is located. Property rented for more than 6 months is presumed to be used for commercial purposes."¹⁷

Abandonment of Homestead Property

Both the homestead property tax exemption and the Save Our Homes assessment limitation may be lost by a property owner that abandons homestead property. Failure to maintain a homestead property as a permanent residence may constitute abandonment under certain circumstances.¹⁸ Section 196.061(1), F.S., describes when renting a homestead property constitutes abandonment:

"The rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment continues until the dwelling is physically occupied by the owner. However, such abandonment of the homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year unless the property is rented for more than 30 days per calendar year for 2 consecutive years."

Rental of Homestead Property Litigation

On various occasions, Florida courts have interpreted the Florida Constitution and Florida law to decide whether the circumstances surrounding the rental of claimed homestead property constitutes abandonment. Two cases that are particularly relevant to the rental of homestead property are described below.

Karayiannakis v. Nikolits (December 9, 2009)¹⁹

This case involved Anna Karayiannakis, who owned a two-story apartment building containing five units. Karayiannakis lived in one of the units and rented out the other four. In 2006 and 2007, she claimed all of her apartment building and the surrounding land as her homestead for taxation purposes. However, the Palm Beach County Property Appraiser, Gary Nikolits, measured her building's dimensions and determined that her residence represented approximately

¹⁶ See FLA. CONST. art. VII, s. 4(d)(8); see also s. 193.155, F.S.

¹⁷ See also Florida Administrative Code Rule 12D-7.013(5): "Property used as a residence and also used by the owner as a place of business does not lose its homestead character. The two uses should be separated with that portion used as a residence being granted the exemption and the remainder being taxed."

¹⁸ See s. 196.031, F.S. and s. 193.155, F.S.

¹⁹ *Karayiannakis v. Nikolits*, 23 So.3d 844 (Fla. 4th DCA 2009)

thirty-seven percent of the total building footprint. As such, the property appraiser concluded that only thirty-seven percent of the land and improvements qualified for the property tax exemptions provided by article VII, section 4(d), and section 6 of the Florida Constitution. The remaining sixty-three percent of the property did receive homestead property tax exemptions. Karayiannakis challenged this determination.

Eventually, the Fourth District Court of Appeals ruled that the property appraiser's division of the property for the application of homestead property tax exemptions was valid:

"[T]he Legislature imposed express limitations on the property tax exemption and assessment cap for homestead property. The tax exemption applies only to those parcels classified and assessed as owner-occupied residential property or only to the portion of property so classified and assessed. And only property that receives a homestead exemption is subject to section 193.155, Florida Statutes (2007), the codification of article VII, section 4(d)'s assessment cap for homestead property. The language in these statutes shows that real property is divisible for tax exemption purposes and that the special tax treatment afforded to homestead property in article VII, sections 4(d) and 6 does not apply to non-homestead property. Property used for commercial purposes, which includes rental property, is non-homestead property." (Internal quotations omitted)²⁰

Furst v. Rebholz (June 19, 2020)²¹

In this case, Rod Rebholz owned a single-family residence. Rebholz permanently resided at the dwelling and claimed the property as a homestead to receive the related tax exemptions. In late 2014, the Sarasota County Property Appraiser Bill Furst received a complaint about Rebholz and discovered that he was renting one of his upstairs bedrooms to a tenant who had been renting the room since March 1996 and that another upstairs bedroom had been rented sporadically during that same period. The property appraiser retroactively revoked the homestead property tax exemptions provided to Rebholz and claimed that the two bedrooms' rental was commercial use that rendered fifteen percent of his residence ineligible for homestead tax exemption. On November 6, 2014, the property appraiser recorded a tax lien against Rebholz's property for \$7,023.87. Rebholz challenged the property appraiser's determination about the tax-exempt status of his property.

Florida's Second District Court of Appeal eventually decided this case in favor of Rebholz. In the opinion, the court ruled that, based upon their analysis of the Florida Constitution, statutes, and administrative codes, a property appraiser is not authorized to subdivide a homeowner's permanent single-family residence to remove homestead tax exemptions when the owner rents a bedroom or any other space within their home.

In making their decision, the court notes several vital facts that instructed their decision. First, the court states that this case is distinguishable from *Karayiannakis v. Nikolits* because that case did not involve the division of a homeowner's personal residence:

²⁰ *Karayiannakis* at 846

²¹ *Furst v. Rebholz*, 302 So.3d 423 (Fla. 2nd DCA 2020)

"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."²²

Second, although the property appraiser never alleged that Rebholz rented out "all or substantially all" of his dwelling as described in s. 196.061, F.S., the court recognized that this statute was nevertheless noteworthy:

"[Section 196.061, F.S.] illustrates that the Legislature has contemplated the effect that the rental of a dwelling has on the eligibility to claim the homestead exemption and has chosen to only effectuate a loss of the exemption if all or substantially all of the property is rented. One can reasonably infer that this is because a homeowner who rents all or substantially all of a dwelling is not maintaining that dwelling as their permanent residence as defined by section 196.012(17)."²³

Third, the court referenced that homestead protection from forced sale to satisfy a creditor's debt under article X, section 4(a)(1), of the Florida Constitution. The court noted that these debtor homestead protections applied to an entire residence regardless of the rental of portions therein. When determining whether the debtor homestead protections apply to a residence being used for commercial activity, courts consider "whether a unit or parcel is susceptible to division by perpendicular and/or horizontal lines and whether such unit or parcel is lawfully conveyable as an independent parcel under existing law."²⁴ The Second District Court of Appeal applied this geometric analysis to Rebholz's property:

"[T]he space Rebholz rented out in his home, the actual bedrooms may be outlined by specific perpendicular and horizontal lines, but the same cannot be said for the common spaces that the tenants shared with Rebholz and one another; furthermore, none of the space used by the tenants could lawfully be conveyed as an independent parcel. This analysis demonstrates the unique indivisible nature of a person's private permanent residence."²⁵

The court concluded their opinion by stating that an interpretation of the Florida Constitution and law in favor of Furst, allowing the removal of tax exemptions for space rented within a home, would "circumvent public policy and could create financial hardship for countless Florida citizens who reside within their permanent residences while renting bedrooms or working from home to make ends meet."²⁶

²² *Furst* at 431

²³ *Id.* at 432

²⁴ *Id.*

²⁵ *Id.* at 433

²⁶ *Id.* at 434

Since the issuance of this opinion, Furst has petitioned the Florida Supreme Court to review the case. However, the Florida Supreme Court has yet to grant or deny jurisdiction of the case.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 196.061, F.S., to specify that renting a homestead property portion does not constitute abandonment if the homestead property owner continues to occupy the dwelling physically.

Section 2 provides an effective date of July 1, 2021.

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, 1989. However, the mandate requirements do not apply to laws having an insignificant impact,^{28, 29} which is \$2.2 million or less for Fiscal Year 2020-2021.³⁰ If the actual reduction in property tax revenue exceeds \$2.2 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.

²⁷ Florida Supreme Court Docket, *Case Number: SC20-1479 – Active BILL FURST, ETC., ET AL. vs. ROD REBHOLZ, ETC. ET AL.*, available at: <http://onlinedocketssc.flcourts.org/DocketResults/CaseDocket?Searchtype=Case+Number&CaseTypeSelected=All&CaseYear=2020&CaseNumber=1479> (last visited Jan. 31, 2021).

²⁸ FLA. CONST. art. VII, s. 18(d).

²⁹ 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 Jan. 31, 2021).

³⁰ Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://www.edr.state.fl.us/Content/conferences/population/index.cfm> (last visited Feb. 1, 2021).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

SB 132 may have an indirect positive fiscal impact for homestead property owners by affirmatively protecting their homestead property tax exemptions if they rent a portion of their permanent dwelling.

C. Government Sector Impact:

To the extent property appraisers are taxing portions of single-family homestead residences being rented by a co-habiting owner, local governments will experience decrease in property tax revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.061 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.