

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1642

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Latvala

SUBJECT: Homestead exemptions

DATE: April 13, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that property owners are not entitled to a homestead exemption if they receive an ad valorem exemption or tax credit from another state, where permanent residency is required as a basis for the exemption or credit.

This bill amends section 196.031 of the Florida Statutes.

II. Present Situation:

Article VII, s. 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(a) provides exceptions to this requirement 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. Section 4(b) provides that tangible personal property that is held as stock in trade or livestock may be assessed at a specified percentage of its value, be classified for tax purposes, or be totally exempted. Section 4(c) provides for a homestead property assessment increase limitation.

Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;
- Portions of property use predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;

- To every head of a family residing in the state, household goods and personal effects to the value fixed by general law, no less than \$1,000; (Pursuant to s. 196.181, F.S., tangible personal property used for residential purposes is not subject to ad valorem tax.);
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than \$500, as provided in general law;
- Real and tangible personal property used for community and economic development, by local option and as defined by general law;
- Renewable energy source devices and real property on which the device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years; and
- Historic properties, by local option and as defined by general law.

Article VII, s. 6 of the Florida 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. Section 6(e) authorizes the Legislature to establish by general law an exemption that "provides to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies." Section 6(f) authorizes the Legislature to allow counties and municipalities, for the purpose of their respective tax levies, to grant an additional homestead exemption, not to exceed \$25,000, to persons 65 years old or older. However, the exemption is available to persons whose income does not exceed \$20,000 annually, adjusted periodically to changes in the cost of living.

Section 196.031, F.S., primarily implements the \$25,000 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 (s. 196.061, F.S.).

Section 196.012(17), F.S., defines "permanent resident" as a person who has established a permanent residence as defined in subsection (18). Subsection (18) defines "permanent residence" as that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Section 196.015, F.S., stipulates that the intention to establish a permanent residence in this state is a factual determination to be made by the property appraiser. While any one factor is not conclusive, the statute lists relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state. These factors include:

- Formal declarations of the applicant;
- Informal statements of the applicant;
- The place of employment of the applicant;
- The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated;

- The place where the applicant is registered to vote;
- The place of issuance of a driver's license to the applicant;
- The place of issuance of a license tag on any motor vehicle owned by the applicant;
- The address as listed on federal income tax returns filed by the applicant; and
- The previous filing of Florida intangible tax returns by the applicant.

The Florida Department of Revenue has promulgated Rule 12D-7.007, F.A.C., relating to residency requirements for homestead exemption. The rule provides:

- For one to make a certain parcel of land his permanent home, he must reside thereon with a present intention of living there indefinitely and with no present intention of moving therefrom.
- A property owner, who in good faith, makes real property in this state his permanent home is entitled to homestead tax exemption, notwithstanding he is not a citizen of the United States or of this State. *Smith v. Voight* 28 So.2d 426 (Fla. 1946)
- A person in this country under a temporary visa cannot meet the requirement of permanent residence or home and, therefore, cannot claim homestead exemption.
- A person not residing in a taxing unit but owning real property therein may claim such property as tax exempt under Section 6, Article VII of the State Constitution by reason of residence on the property of natural or legal dependents provided he can prove to the satisfaction of the property appraiser that he claims no other homestead tax exemption in Florida for himself or for others legally or naturally dependent upon him for support. It must also be affirmatively shown that the natural or legal dependents residing on the property, which is claimed to be exempt by reason of a homestead, are entirely or largely dependent upon the landowner for support and maintenance.

In 1998, the Pasco County Property Appraiser denied a homestead property tax exemption to homeowners because he deemed they were not qualified for the exemption. The appraiser reasoned the applicants should not be considered permanent residents of Pasco County because they received a residency-based property tax credit in another state. The circuit court disagreed and ruled in favor of the homeowners. *Wells v. Vallier*, No. 98-6248 (Fla 6th Cir. Ct. July 10, 1999) The property appraiser appealed the ruling, and the 2nd District Court of Appeals affirmed the lower court decision. *Wells v. Vallier*, 773 So2d 1197 (Fla. App. 2 Dist., 2000) The court reasoned that “while the fact that a property owner receives a residency-based property tax credit in another state may be a factor considered in determining whether Florida is their permanent residence, that fact alone is not conclusive on the issue.”

III. Effect of Proposed Changes:

Section 1 amends s. 196.031, F.S., to provide that property owners are not entitled to a homestead exemption if they receive or claim the benefit of an ad valorem exemption or tax credit from another state on property they own in that state, where permanent residency is required as a basis for the exemption or credit. However, a property owner may remain eligible for the Florida homestead exemption if the Florida homestead is maintained for a dependent.

Section 2 provides that the bill will take effect January 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill may make it more difficult for some homeowners to qualify for the homestead property tax exemption in s. 196.031, F.S. Because the “additional homestead exemption for person 65 and older,” pursuant to s. 196.075, F.S., is linked to the exemption in s. 196.031, F.S., the bill also prohibits homeowners from receiving the additional exemption. The positive fiscal impact on local governments levying property taxes is indeterminate.

B. Private Sector Impact:

This bill may make it more difficult for some homeowners to qualify for the homestead property tax exemption.

C. Government Sector Impact:

This bill provides additional guidance to the property appraiser when determining whether a homeowner is eligible for a homestead property tax exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.