

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 879 Surviving Spouse Ad Valorem Tax Reduction

SPONSOR(S): Killebrew

TIED BILLS: HJR 877 **IDEN./SIM. BILLS:** SB 1074

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------|---------|--|
| 1) Local, Federal & Veterans Affairs Subcommittee | 14 Y, 0 N | Renner | Miller |
| 2) Ways & Means Committee | 17 Y, 0 N | Curry | Langston |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The Florida Constitution provides a discount from the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally permanently disabled as a result of combat. The discount is equal to the percentage of the veteran's disability as determined by the United States Department of Veterans Affairs.

HJR 877 proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if certain requirements are met.

This bill implements HJR 877 if the amendment is approved by the voters. The bill would allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds legal or beneficial title to the homestead and permanently resides thereon. The discount would apply to the property until the surviving spouse remarries, sells, or otherwise disposes of the property. If the surviving spouse sells the property, the discount may be transferred to the surviving spouse's new residence, not to exceed the amount granted from the most recent ad valorem tax roll, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

A spouse who is qualified to receive the discount and who fails to file an application by March 1 may file the application for the discount and may file a petition with the value adjustment board requesting that the discount be granted.

The bill authorizes the Department of Revenue to adopt emergency rules and provides that the emergency rules are effective for six months.

The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of \$0.4 million in FY 2021-22 with a recurring negative impact of \$1.6 million. The negative impact on non-school property tax revenues is estimated to be \$0.6 million in FY 2021-22 with a recurring negative impact of \$2.4 million.

The bill takes effect on the same date that HJR 877, or a similar joint resolution, is approved by the electors at the general election to be held in November 2020 or at an earlier special election specifically authorized for that purpose. If approved by the voters, the joint resolution will become effective on January 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Exemptions

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

Case law precedent provides that the Legislature may only grant property tax exemptions that are authorized in the Florida Constitution. Any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁶

Article VII, section 3 of the Florida Constitution provides for other specific exemptions from property taxes, including, but not limited to, exemptions for widows and widowers, blind persons, and persons who are totally and permanently disabled.

Veteran Exemptions

Article VII, section 6(e) of the Florida Constitution provides a discount on the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally permanently disabled as a result of combat. Section 196.082, F.S., implements this provision. The discount is equal to the percentage of the veteran's permanent, service-connected disability as determined by the U.S. Department of Veterans Affairs.⁷ The discount is limited to veterans

¹ Art. VII, s. 1(a), Fla. Const.

² S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Art. VII, s. 4, Fla. Const.

⁴ Art. VII, ss. 3, 4, and 6, Fla. Const.

⁵ S. 196.031, F.S.

⁶ *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).

⁷ The U.S. Department of Veterans Affairs (USDVA) assigns a percentage evaluation from 0-percent to 100-percent (in 10-percent increments) for the amount of disability that the USDVA determines the veteran has sustained. The resulting disability percentage rating determines the level of a veteran's monthly disability compensation. *See* United States Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, Federal Benefits for Veterans, Dependents and Survivors, Chapter 2-Service-connected Disabilities, available at: http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp (last visited Feb. 8, 2019).

with a combat related disability, and not all service-connected disabilities are combat related. Furthermore, current law does not allow the spouse of a veteran receiving this discount to claim the benefit if he or she survives the veteran.

HJR 877

HJR 877 proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if certain requirements are met. The amendment, if approved by the voters, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

Emergency Rulemaking

State agencies with rulemaking authority in a specific area generally may adopt emergency rules in that area if there is an immediate danger to the public health, safety, or welfare.⁸ Emergency rules typically are effective only for 90 days and may not be renewed except in certain circumstances.⁹

Effect of Proposed Changes

This bill implements HJR 877 (2020) if the amendment is approved by the voters.

The bill would allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry.

The discount would apply to the property until the surviving spouse remarries, sells or otherwise disposes of the property. If the spouse sells the property, a discount not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

A spouse who is qualified to receive the discount and who fails to file an application by March 1 may file the application for the discount and may file a petition with the value adjustment board requesting that the discount be granted.

The bill authorizes the Department of Revenue (DOR) to adopt emergency rules to administer the provisions of the bill.¹⁰ The bill provides that the adopted emergency rules are effective for six months after adoption and authorizes the emergency rules to be renewed during the process of adopting permanent rules. The emergency rulemaking authority expires January 1, 2022.

B. SECTION DIRECTORY:

Section 1 amends s. 196.082, F.S., authorizing surviving spouses of deceased veterans to carry over certain discounts on ad valorem taxes on homestead properties under specified conditions.

Section 2 authorizes DOR to adopt emergency rules.

⁸ S. 120.54(4), F.S.

⁹ S. 120.54(4)(c), F.S. Emergency rules typically may be renewed only if the agency has initiated rulemaking to adopt permanent rules on the same subject and either a challenge to those proposed rules is still pending or the proposed rule is still pending legislative ratification. *Id.*

¹⁰ DOR stated that if the bill becomes law, and voters approve the constitutional amendment, DOR would need to amend two forms. Specifically, DOR would need to amend the Original Application for Homestead and Related Tax Exemptions and the Application for Homestead Tax Discount. Therefore, DOR requests legislative authority to initiate emergency rulemaking. Department of Revenue, *2020 Agency Legislative Bill Analysis, HB 879 (2019)*, on file with Local, Federal & Veterans Affairs Subcommittee.

Section 3 provides for a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of \$0.4 million in FY 2021-22 with a recurring negative impact of \$1.6 million. The negative impact on non-school property tax revenues is estimated to be \$0.6 million in FY 2021-22 with a recurring negative impact of \$2.4 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If HJR 877 is approved by the voters and this bill passes, surviving spouses of certain veterans could receive property tax relief.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOR to adopt emergency rules and provides that the adopted emergency rules are effective for six months. The emergency rules may be renewed until DOR adopts permanent rules. The emergency rulemaking authority expires January 1, 2022.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES