Constitutional Amendments

The legislature passed two constitutional amendments that will appear on the November 2018 general election ballot. They will require 60 percent voter approval and, if adopted, will become effective January 1, 2019.

CS/HJR 21 – 10% Assessment Cap on Specified Non-Homestead Real Property

The legislature has proposed a constitutional amendment abrogating the scheduled "sunset" and repeal of the 10 percent assessment cap on specified non-homestead real property. The amendment renews the assessment cap indefinitely. The proposed amendment will be on the ballot for the 2018 general election. The ballot summary provides as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE XII, SECTION 27

LIMITATIONS ON PROPERTY TAX ASSESSMENTS.—Proposing an amendment to the State Constitution to permanently retain provisions currently in effect, which limit property tax assessment increases on specified nonhomestead real property, except for school district taxes, to 10 percent each year. If approved, the amendment removes the scheduled repeal of such provisions in 2019 and shall take effect January 1, 2019.

Effective date: January 1, 2019. Signed by Officers and filed with the Secretary of State on May 8, 2017.

HJR 7105 – Additional Homestead Exemption of $25,000

The legislature has proposed an additional homestead exemption of $25,000 on the assessed valuation greater than $100,000, for all levies other than school district levies. The proposed amendment barely passed both chambers by the required 3/5 vote. In the House, the initial vote was 81-35. In the Senate, the vote was 28-10. When the joint resolution returned to the House after the Senate’s amendment changing the value range for the exemption, the vote was 83-35. The proposed amendment will be on the 2018 general election ballot. The ballot summary provides as follows:
CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTION 6
ARTICLE XII, SECTION 37

INCREASED HOMESTEAD PROPERTY TAX EXEMPTION.—Proposing an amendment to the State Constitution to increase the homestead exemption by exempting the assessed valuation of homestead property greater than $100,000 and up to $125,000 for all levies other than school district levies. The amendment shall take effect January 1, 2019.

If the amendment were adopted, the homestead tax exemption would be applied as follows:

$0 - $25,000 - Exempt from all levies
$25,000 - $50,000 - Taxable
$50,000 - $75,000 - Exempt from all levies except school district levies
$75,000 - $100,000 - Taxable
$100,000 - $125,000 - Exempt from all levies except school district levies

Effective date: January 1, 2019. Signed by the Officers and filed with the Secretary of State on May 5, 2017.

HB 7107 – Additional Homestead Exemption Implementation

The legislature also passed an implementing bill for the additional homestead exemption, which is contingent upon voter approval of the amendment and effective January 1, 2019. The bill specifies that "up to an additional $25,000 on the assessed valuation greater than $100,000" is exempt, beginning in the 2019 tax year.

Rolled-Back Rate and Maximum Millage Calculations

Effective only for the 2019 tax year, the legislature has required that the calculation of the rolled-back rate use a taxable value that is increased to equal the reduction in value caused by implementation of the amendment. The practical effect is to require any increase in millage that would offset the taxable value reduction caused by the additional homestead exemption to be characterized as a "tax increase" and also implicate the maximum millage rate voting requirements under section 200.065, Florida Statutes. The language provides that:

Notwithstanding the method of computing the rolled-back rate in subsection (1), the taxable value that is used in computing the rolled-back rate in subsection (1) and the maximum millage rate under subsection (5) shall be increased by an amount equal to the reduction in taxable value occurring as a result of the revision to s. 6(a) of Art. VII of the State Constitution approved in November 2018 which authorizes an additional exemption of up to $25,000 for all levies other than school
district levies. For purposes of this paragraph, the taxable value shall be based on value as of January 1, 2019, within each taxing authority.

Fiscally Constrained Counties

The implementing bill includes the same offset language for fiscally constrained counties as previously used with the ad valorem tax reductions caused by Amendment 1 and the conservation lands exemption. Beginning in the 2019-2020 fiscal year, the legislature will include appropriations for taxes lost as a direct result of the additional homestead exemption. Funds will be made available in January, which for the first year will be January 2020; provided that the county applies for the funds by November 15 of the previous year.

Consistent with the earlier legislation, the amount of the tax reduction caused by the additional homestead exemption will be calculated at 95 percent of the estimated reduction in taxable value when multiplied by either the millage rate in effect for 2017 or the current millage rate, whichever is lower. The language provides that:

For purposes of paragraph (1)(b), each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value multiplied by the lesser of the 2017 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current year.


General Bills

CS/SB 90 – Renewable Energy Source Device Exemption

The legislature implemented the 2016 constitutional amendment for renewable energy source devices. For a renewable energy source device that is considered tangible personal property, the bill authorized an exemption of 80 percent. In addition, 80 percent of the just value of real property attributable to the installation of a renewable energy source device may not be included in the valuation thereof.

The ad valorem taxation provisions of the bill take effect beginning in the 2018 tax year and apply only to renewable energy source devices installed on or after January 1, 2018. There are limited exceptions to this effective date, with specific language addressing projects in fiscally constrained counties and other specified projects with different dates. As a result, there will be very few properties that actually qualify under the provisions for the 2018 tax year.
Renewable Energy Source Device

The bill adopted the definition of renewable energy source device currently set forth in section 193.624, Florida Statutes. The definition was amended to include wiring, supports, and components that were "integral parts" of the system but does not include conventional backup systems of any type or "any equipment or structure that would be required in the absence of the renewable energy source device."

The term also does not include equipment that is on the "distribution or transmission side of the point at which a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines."

Real Property

Similar to the treatment of renewable energy source devices installed on residential real property, the bill does not provide for an exemption for nonresidential real property. Rather, the bill prohibits the installation of a renewable energy source device from increasing the just value of the real property as specified therein. "For nonresidential purposes, 80 percent of the just value of the property attributable to a renewable energy source device may not be considered" in determining the assessed value. The bill does not change the valuation of residential real property with renewable energy source devices where "the just value of the property attributable to a renewable energy source device may not be considered."

The bill applies to any "renewable energy source device installed on or after January 1, 2018, to all other real property, except when installed as part of a project planned for a location in a fiscally constrained county, as defined in s. 218.67(1), and for which an application for a comprehensive plan amendment or planned unit development zoning has been filed with the county on or before December 31, 2017."

Tangible Personal Property

The bill provides an 80 percent exemption of the assessed value for a renewable energy source device that is considered tangible personal property, provided that it:

(a) Is installed on real property on or after January 1, 2018;
(b) Was installed before January 1, 2018, to supply a municipal electric utility located within a consolidated government; or
(c) Was installed after August 30, 2016, on municipal land as part of a project incorporating other renewable energy source devices under common ownership on municipal land for the sole purpose of supplying a municipal electric utility with at least 2 megawatts and no more than 5 megawatts of alternating current power when the renewable energy source devices in the project are used together.
The same language relating to the installation of renewable energy source devices on real property located in fiscally constrained counties is included for tangible personal property.

The bill also provides that 80 percent of the assessed value of a renewable energy source device "affixed to property owned or leased by the United States Department of Defense for the military is exempt from ad valorem taxation, including, but not limited to, the tangible personal property tax." There is no installation date for this section.

The bill includes a sunset provision, which requires that it expires on December 31, 2037.

**Effective date:** July 1, 2017. Signed by the Officers and presented to Gov. Scott on June 5, 2017. The Governor's deadline is June 20, 2017.

**CS/CS/HB 455 – Totally and Permanently Disabled First Responders Exemption**

The legislature passed a bill implementing the 2016 constitutional amendment authorizing a 100 percent exemption for totally and permanently disabled first responders injured in the line of duty. The bill provides in part that:

> Any real estate that is owned and used as a homestead by a person who has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder in this state or during an operation in another state or country authorized by this state or a political subdivision of this state is exempt from taxation if the first responder is a permanent resident of this state on January 1 of the year for which the exemption is being claimed.

(Emphasis added.) The bill includes definitions for first responder, totally and permanently disabled, and line of duty. The bill is effective for the 2017 tax year and, therefore, also includes language delineating application requirements for this year.

**First Responder**

Only Florida first responders are eligible for the exemption. In addition to the language quoted above, the bill relies upon the definition of "first responder" set forth in section 196.081, Florida Statutes, which includes the exemption for surviving spouses of first responders who die in the line of duty, and provides that: "'First responder' means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer." § 196.081(6)(c)1., Fla. Stat. (2016). Review of each of the statutory references reveals that the language is limited to those first responders with Florida-based entities. "Law enforcement officer" is defined as any person who is elected, appointed, or employed fulltime by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic,
or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of fulltime law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. § 943.10(1), Fla. Stat. (2016).

"Correctional officer" is defined as any person who is appointed or employed full-time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. § 943.10(2), Fla. Stat. (2016).

"Firefighter" is defined as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under section 633.408, Florida Statutes. § 633.102(9), Fla. Stat. (2016).

"Emergency medical technician" is defined as a person who is certified by the Department of Health to perform basic life support pursuant to part III of Chapter 401, Florida Statutes. § 401.23(11), Fla. Stat. (2016).

"Paramedic" is defined as a person who is certified by the Department of Health to perform basic and advanced life support pursuant to part III of Chapter 401. § 401.23(17), Fla. Stat. (2016).

To the extent that it may be unclear under section 196.081(6)(c)1, the bill specifically requires the injury sustained in the line of duty to have occurred "while serving as a first responder in this state" or during an operation in another state or country "authorized by this state or a political subdivision of this state."

**Totally and Permanently Disabled**

"'Total and permanent disability' means an impairment of the mind or body that renders a first responder unable to engage in any substantial gainful occupation and that is reasonably certain to continue throughout his or her life." The bill provides that proof of totally and permanently disabled may be provided in two separate methods, both of which are prima facie evidence of disability:

1. Satisfying the requirements of section 196.101, Florida Statutes, which authorizes an exemption for a quadriplegic, paraplegic, hemiplegic, legally blind, or totally and permanently disabled person who must use a wheelchair for mobility. A certificate of such disability from two licensed doctors of this state is required. The gross income requirement of section 196.101, however, does not apply.
2. a. Documentation from the Social Security Administration stating that the applicant is totally and permanently disabled. The documentation must be provided to the property appraiser within three months after issuance. The applicant also must have one certificate of disability from a licensed doctor of this state.

b. An applicant that cannot obtain the medical status determination because of ineligibility for social security or medicare benefits must provide documentation to that effect from the Social Security Administration and physician certifications from two professionally unrelated licensed physicians of this state.

Line of Duty

The bill adopts the same line of duty requirements for first responders who died in the line of duty by reference to section 196.081, Florida Statutes. All applicants will be required to obtain an "Employer Certificate," which may be provided to the property appraiser by the applicant or directly from the employer. The Employer Certificate must contain, at a minimum:

a. The title of the person signing the certificate;
b. The name and address of the employing entity;
c. A description of the incident that caused the injury or injuries;
d. The date and location of the incident; and
e. A statement that the first responder's injury or injuries were: (I) Directly and proximately caused by service in the line of duty. (II) Without willful negligence on the part of the first responder. (III) The sole cause of the first responder's total and permanent disability.

The Employer Certificate must be supplemented with documentation of the incident or event that caused the injury, such as an accident or incident report.

There are additional requirements for injuries caused by cardiac events. In such cases, the certificate must include a statement from the first responder's treating cardiologist for cardiac events that, within a reasonable degree of medical certainty:

(a) The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability; and
(b) The cardiac event was not caused by a preexisting vascular disease.

Application Requirements for 2017

Applications are due by August 1, 2017. Untimely applications may be granted if filed no later than 25 days following the mailing of the TRIM, provided that the applicant is qualified for the exemption and produces "sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption."
If the property appraiser denies the exemption, either because the applicant was not qualified or failed to produce sufficient evidence for the late-filed application, the applicant may file a petition with the Value Adjustment Board.

Other provisions

An applicant has a duty to notify of any change in status. "An applicant who is granted the exemption under this section has a continuing duty to notify the property appraiser of any changes in his or her status with the Social Security Administration or in employment or other relevant changes in circumstances which affect his or her qualification for the exemption."

The bill allows a surviving spouse of a qualifying first responder to receive the exemption, provided that he or she continues to permanently reside on the property and does not remarry. If the property is subsequently sold, an exemption not to exceed the amount of the exemption from the most recent tax roll may be carried forward to the new residence.

Applicants also may apply before obtaining all of the necessary documentation. In the same manner as veterans' exemptions, refunds will be issued for the year of original application for up to the four-year period set forth in section 197.182, Florida Statutes.


CS/CS/HB 687 – Wireless Facilities

This bill addresses the colocation of certain voice or data communications on governmentally-owned facilities within public rights-of-way. At lines 322-324, language is included providing that "[c]olocation of a small wireless facility on an authority utility pole does not provide a basis for the imposition of an ad valorem tax on the authority utility pole." The act becomes effective July 1, 2017. The language should be read in context with the specific program described in the bill and should not be construed to apply to leased properties.

Effective date: July 1, 2017. Not yet presented to Gov. Scott.

HB 7109 – Tax Package

The legislature's annual tax package, which typically includes various sales tax holidays and other tax or fee reductions, included several property tax provisions. None of these provisions traveled through the normal process for bills and consideration by the various committees of reference in the Senate and the House. With the exception of a 50 percent discount from taxes for certain affordable housing projects, the provisions relate to specific properties or circumstances in individual counties.
Inventory

The bill amends the definition of inventory by including a new paragraph that provides:

'Inventory' also means construction and agricultural equipment weighing 1,000 pounds or more that is returned to a dealership under a rent-to-purchase option and held for sale to customers in the ordinary course of business. This subparagraph not be considered in determining whether property that is not construction and agricultural equipment weighing 1,000 pounds or more that is returned under a rent-to-purchase option is inventory under subparagraph 1.

Under current law, property that has been leased once and returned to the dealer and held out for lease again would not be considered inventory. In contrast, property held out for sale as opposed to lease would be considered inventory. The language of the bill is limited to certain types of construction and agricultural equipment that have been returned to the dealer under a rent-to-purchase option and held for sale to customers. Arguably, no change to current law effectively has occurred. The change in definition would not apply until the 2018 tax year.

Assisted Living Facilities

The bill amends the definition of nursing home or home for special services to include institutions possessing a valid license under part I of chapter 429, which are assisted living facilities (ALF). As a result, ALF’s will be subject to the exemption provisions set forth in section 196.197, Florida Statutes, which prescribes certain ownership structures as qualifying for an exemption. The amendment applies to the 2017 tax year.

The apparent intent of this language is to overrule a recent circuit court case in Polk County, whereby the denial of an application for a Homes for the Aged was upheld because the ownership structure did not comply with the requirements of section 196.1975, Florida Statutes.

Homes for the Aged

The bill amends the Homes for the Aged statute to require the filing of an affidavit from "each person who occupies a unit or apartment which states the person's income. The affidavit is prima facie evidence of the person's income." The property appraiser, however, is authorized to request additional documentation proving the person’s income. This portion of the bill has no specific effective date, and will be effective upon becoming law.

Affordable Housing Projects

The bill includes a 50 percent discount on taxes otherwise owed on certain affordable housing projects owned by for-profit entities. The discount is not effective until January 1, 2018. The language provides that:
(2)(a) Notwithstanding ss. 196.195 and 196.196, property in a multifamily project that meets the requirements of this paragraph is considered property used for a charitable purpose and shall receive a 50 percent discount from the amount of ad valorem tax otherwise owed beginning with the January assessment after the 15th completed year of the term of the recorded agreement on those portions of the affordable housing property that provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004. The multifamily project must:

1. Contain more than 70 units that are used to provide affordable housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004; and

2. Be subject to an agreement with the Florida Housing Finance Corporation recorded in the official records of the county in which the property is located to provide affordable housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004.

This discount terminates if the property no longer serves extremely-low-income, very-low-income, or low-income persons pursuant to the recorded agreement.

(b) To receive the discount under paragraph (a), a qualified applicant must submit an application to the county property appraiser by March 1.

(c) The property appraiser shall apply the discount by reducing the taxable value on those portions of the affordable housing property that provide housing to natural persons or families meeting the extremely-low-income, very-low-income, or low-income limits specified in s. 420.0004 before certifying the tax roll to the tax collector.

1. The property appraiser shall first ascertain all other applicable exemptions, including exemptions provided pursuant to local option, and deduct all other exemptions from the assessed value.

2. Fifty percent of the remaining value shall be subtracted to yield the discounted taxable value.

3. The resulting taxable value shall be included in the certification for use by taxing authorities in setting millage.

4. The property appraiser shall place the discounted amount on the tax roll when it is extended.

Charter School Exemption

The bill includes language amending the charter school exemption. Property owned by a for-profit entity and leased to a charter school operator will be exempt if the landlord certifies that the "required lease payments under the lease, whether paid to the landlord or on behalf of the landlord to a third party," will be reduced to the extent of the exemption received. The bill deletes language requiring that the charter school receive the full benefit of the exemption "through either an annual or monthly credit to the charter school's lease payments." The bill is effective as of January 1, 2017.
Charter Schools and Failure to Apply for Exemption

The bill authorizes a limited exception to the waiver caused by the failure to apply for exemption, and provides that:

Notwithstanding the application deadline stated in s. 196.011(1)(a), Florida Statutes, an educational institution that leased a facility that was exempt from ad valorem tax under s. 196.1983, Florida Statutes, for the 2015 ad valorem tax roll and purchased the facility may apply for the exemption under s. 196.198, Florida Statutes, for the 2016 ad valorem tax roll by filing an application on or before August 1, 2017.