

**STORAGE NAME:** h1627.ca

**DATE:** April 5, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1627

**RELATING TO:** Ad Valorem Taxation (Deepwater Ports)

**SPONSOR(S):** Representative Healey

**STATUTE(S) AFFECTED:** Section 196.012, F.S.

**COMPANION BILL(S):** SB 1746 (i)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS
- (2) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
- (3) FINANCE & TAXATION
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
- (5)

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**I. SUMMARY:**

For purposes of exempting property from ad valorem taxation, the bill defines the circumstances under which a deepwater port operated by a lessee of government-owned property may be deemed to serve or perform a governmental, municipal or public purpose.

If the lessee is engaged in the following activities, the activity is considered to be serving a governmental, municipal, or public purpose or function, and the real property is exempt from taxation:

- ▶ Waterborne transportation activities involving passengers, cargo, vehicles, goods, bulk commodities, or agricultural products and materials; or
- ▶ Activities that support such activities, including without limitation, the storage and maintenance of vessels, the operation of cruise passenger terminals and related facilities and accommodations, ship repair, shipbuilding, commercial fishing, stevedoring, and terminal operations, and uses the real property for the administration, operation, business offices, and other uses specifically related thereto in connection with such activities.

This bill has no fiscal impact on state government.

The fiscal impact on local governments cannot be determined at this time (See FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE section). However, to the extent that the bill exempts special district property from ad valorem taxation, the bill reduces the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate and requires a two-thirds vote of the membership of each house pursuant to the mandates provision of the Florida Constitution.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Article VII, section 3 of the State Constitution provides for exemptions from ad valorem taxation. Paragraph (a) exempts all property owned by a municipality and used by it for municipal or public purposes and provides that portions of property used predominately for educational, literary, scientific, religious or charitable purposes may also be exempt.

Section 196.001, F.S., provides that the following property is taxable, unless specifically exempted:

- ▶ All real and personal property in the state belonging to persons residing in this state; and
- ▶ All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Section 196.199, F.S., 1996 Supplement, provides the conditions under which property owned and used by governmental units is exempt from taxation. Paragraphs (a), (b) and (c) of subsection (1) exempt from ad valorem taxation property owned by the United States, with certain exceptions, property of the state used for governmental purposes, and *all property of the political subdivisions and municipalities of the state or of entities created by general or special law and composed entirely of governmental agencies*, or property conveyed to a nonprofit corporation which would revert to the governmental agency, *which is used for governmental, municipal, or public purposes*, except as otherwise provided by law.

Subsection (2) of section 196.199, F.S., 1996 Supplement, provides the conditions under which property owned by governmental entities, *but leased to nongovernmental entities*, is exempt from taxation. Paragraph (a) specifies that such property is only exempt from taxation *when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in section 196.012(6)*. This paragraph excludes from the exemption property leased for use as a multipurpose hazardous waste treatment facility. Paragraph (b) deals with use of such property for residential or commercial rentals, and paragraph (c) includes in the exemption any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes. Subsection (4) of section 196.199, F.S., 1996 Supplement, provides that all property owned by a government entity which is leased to a nongovernmental lessee, *except that described in paragraph (2)(a)*, is subject to ad valorem taxation *unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes*.

Section 196.012, F.S., lists the conditions under which the use of governmental property by a lessee is deemed to be serving or performing a governmental, municipal or public purpose or function. Such purpose is demonstrated when the use could properly be performed or served by an appropriate governmental unit, or would otherwise be a valid subject for the allocation of public funds. This section specifically includes use as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration when the real property is used for the administration, operation, business

offices and activities related and connected with the conduct of an aircraft full service fixed based operation and provides goods and services to the general aviation public in the promotion of air commerce. Other uses specifically included are a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach, when open to the general public with or without an admission charge.

Finally, chapter 315, F.S., known as the "1959 Port Facilities Financing Law," regulates the financing of port authorities. Section 315.11, F.S., provides that port authorities are exempt from state, county, municipal or other taxes or assessments thereon, because they are essential to the welfare of the residents and the industrial and commercial development of the area within or served by the unit, and "as the exercise of the powers conferred by this law to effect such purposes *constitutes the performance of proper public and governmental functions.*"

In *Canaveral Port Authority v. Dept. of Revenue*, 21 Fla. L. Weekly S529 (Fla., December 5, 1996), the Florida Supreme Court, in a 4 to 3 decision, upheld the Fifth District Court of Appeal's decision affirming Brevard County's authority to assess ad valorem taxes on the fee interest of real property owned by the Authority and leased to private entities engaged in nongovernmental activities. The leased properties were being used for warehouses, gas stations, deli restaurants, fish markets, charter boat sites, and docks. *Id.* The County had assessed ad valorem taxes on buildings and improvements constructed on the property, but not on the land. *Id.* at fn. 1.

The Court reviewed section 315.11, F.S., in conjunction with the provisions of section 196.199, F.S., 1996 Supplement, and concluded that the exemption in section 315.11, F.S., had been limited by the Legislature in adopting section 196.199, F.S., 1996 Supplement; therefore, an ad valorem tax exemption for fee interests in port authority property would only be granted when such property is being used for a purpose which is specifically set forth in paragraphs (2) and (4). *Id.* at S530. In holding that the property at issue was not exempt from ad valorem taxation, the Court cited previous opinions holding that the operation of commercial establishments on governmental property is purely proprietary and for profit. *Id.* The Court reasoned that "no rational basis exists for exempting from ad valorem taxation a commercial establishment operated for profit on CPA property while a similar establishment located near, but not on, CPA property is not exempt." *Id.*

Florida's deepwater ports are the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West, as set forth in section 403.031(9)(b), F.S., 1996 Supplement.

#### B. EFFECT OF PROPOSED CHANGES:

This bill describes the circumstances under which a deepwater port operated by a lessee on government-owned property will be deemed to be serving or performing a governmental, municipal or public purpose. If the lessee is engaged in the following activities, the activity is considered to be serving a governmental, municipal, or public purpose or function, *and the real property is exempt from taxation:*

- ▶ Waterborne transportation activities involving passengers, cargo, vehicles, goods, bulk commodities, or agricultural products and materials; or

- ▶ Activities that support such activities, including without limitation, the storage and maintenance of vessels, the operation of cruise passenger terminals *and related facilities* and accommodations, ship repair, shipbuilding, commercial fishing, stevedoring, and terminal operations, and uses the real property for the administration, operation, business offices, and other uses specifically related thereto in connection with such activities.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

Not Applicable (N/A).

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

(3) any entitlement to a government service or benefit?

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Possibly. To the extent that the bill exempts deepwater port property from ad valorem taxation, the bill reduces the ad valorem taxes collected by local governments. Local governments usually shift the burden caused by tax exemptions to non-exempt properties, either in the form of increasing millage rates, if available to them, or creating special assessments to pay for services previously provided for with ad valorem revenues.

- b. Does the bill require or authorize an increase in any fees?

See 2.a. above.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

N/A

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom:

N/A

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
  
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment:

N/A

- a. If the bill purports to provide services to families or children:
  - (1) Who evaluates the family's needs?
  
  - (2) Who makes the decisions?
  
  - (3) Are private alternatives permitted?
  
  - (4) Are families required to participate in a program?
  
  - (5) Are families penalized for not participating in a program?
  
- b. Does the bill directly affect the legal rights and obligations between family members?
  
- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:
  - (1) parents and guardians?
  
  - (2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

**Section 1:** Amends section 196.012(6), F.S., by describing the circumstances under which a deepwater port operated by a lessee on government-owned property will be deemed to be serving or performing a governmental, municipal or public purpose. If the lessee is engaged in the following activities, the activity is considered to be serving a governmental, municipal, or public purpose or function, *and the real property is exempt from taxation.*

- ▶ Waterborne transportation activities involving passengers, cargo, vehicles, goods, bulk commodities, or agricultural products and materials; or
- ▶ Activities that support such activities, including without limitation, the storage and maintenance of vessels, the operation of cruise passenger terminals *and related facilities* and accommodations, ship repair, shipbuilding, commercial fishing, stevedoring, and terminal operations, and uses the real property for the administration, operation, business offices, and other uses specifically related thereto in connection with such activities.

**Section 2:** Provides that the act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

It is very difficult to estimate the fiscal impact of this bill without specific information from each local government indicating how much tax revenue has been collected on governmental leaseholds for deepwater ports within their respective jurisdictions. This data has not been collected.

Therefore, there is no estimate of the amount of tax revenue a local government may lose from a new tax exemption. However, local governments usually shift the burden caused by tax exemptions to non-exempt properties, either in the form of increasing millage rates, if available to them, or creating special assessments to pay for services previously provided for with ad valorem revenues.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Deepwater ports and the customers that utilize their services benefit from the elimination of ad valorem taxes on port property. The extent of this benefit is indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

The proponents of this bill argue that there currently exists a competitive disadvantage between deepwater ports because some were created by special act of the Legislature and granted immunity from ad valorem taxation, while others were not. The proponents of this bill state that this bill will create uniform taxation for all deepwater ports in Florida thereby eliminating any competitive disadvantages that may exist.

**D. FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties and municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

To the extent that the bill exempts special district property from ad valorem taxation, the bill falls under subsection (b) of section 18 of Article VII of the State Constitution. That section requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. It is unclear whether the bill is intended to clarify existing law, or to overrule the Supreme Court's opinion in *Canaveral Port Authority v. Dept. of Revenue, supra*, that leasehold interests in government-owned property are exempt from ad valorem taxation only when the property is used for the purposes specifically set forth in subsections 196.199(2) and (4), F.S. If the bill is interpreted to create an exemption from the authority of municipalities and counties to collect ad valorem taxes on leased properties, then it reduces the base against which ad valorem taxes may be levied.

Subsection (d) of section 18 of Article VII of the State Constitution provides an exemption for laws having an insignificant fiscal impact. It is very difficult to estimate the fiscal impact of this measure without specific information from each local government indicating how much tax revenue has been collected on governmental leaseholds for deepwater ports within their respective jurisdictions. Therefore, since the fiscal impact of the bill is indeterminate, a two-thirds vote is required for passage.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

While deepwater ports created as special districts cannot rely on constitutional immunity from ad valorem taxation as "political subdivisions of the state," it is within the power of the Legislature to exempt all deepwater ports from ad valorem taxation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment will be offered by the sponsor. The amendment deletes the phrase "and the real property is exempt from taxation" in Section 1 of the bill because it is an unnecessary and potentially confusing provision.

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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Jenny Underwood Dietzel

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Jenny Underwood Dietzel