

STORAGE NAME: h4183.go

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4183

RELATING TO: Taxation

SPONSOR(S): Representative Starks and others

COMPANION BILL(S): see SB 522

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

- (1) GOVERNMENTAL OPERATIONS
 - (2) FINANCE & TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill eliminates certain sales tax exemptions, and references to qualification as a s. 501(c)(3) organization, and establishes a broader, more inclusive exemption for all sales or leases to organizations holding an exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. Most of the specific exemptions eliminated require organizations to be exempt under s. 501(c)(3), and meet other requirements. By simply making all 501(c)(3) organizations exempt, those organizations whose specific exemption was eliminated remain exempt, and many other 501(c)(3) organizations who could not meet the other requirements, would become exempt.

There is a substantial fiscal impact associated with this bill [(\$16.4m)], see "Fiscal Comments" section; and, there is a mandates issue, see "Reduction of Revenue Raising Authority."

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Federal 501 (c)(3) Exemptions

26 U.S.C. s. 501 (c)(3) provides exemption from federal income taxation for certain groups which are organized exclusively for one or more of the purposes listed below. The exemption is available only if no part of the group's net earnings benefit private parties and only if the group refrains from political activities. The groups covered by the exemption granted in s. 501 (c)(3) of the Internal Revenue Code (IRC) are as follows:

- (1) Religious
- (2) Charitable
- (3) Scientific
- (4) Educational
- (5) Literary
- (6) Testing for public safety
- (7) Groups fostering national or international amateur sports competition (does not include provision of facilities or sports equipment)
- (8) Prevention of cruelty to children or animals.

Florida Sales Tax Exemptions

Section 212.08, F.S., provides for Florida sales tax exemptions.¹ Sixteen (16) subsections list with specificity the various exemptions, and exemption requirements, and provide other instruction regarding the exemptions:

- (1) Exemptions; General Groceries
- (2) Exemptions; Medical
- (3) Exemptions; Partial; Certain Farm Equipment
- (4) Exemptions; Items Bearing Other Excise Taxes, Etc.
- (5) Exemptions; Account of Use
- (6) Exemptions; Political Subdivisions
- (7) Exemptions; Miscellaneous Exemptions
- (8) Partial Exemptions; Vessels Engaged in Interstate Or Foreign Commerce
- (9) Partial Exemptions; Railroads and Motor Vehicles Engaged in Interstate or Foreign Commerce
- (10) Partial Exemption; Motor Vehicle Sold to Resident of Another State
- (11) Partial Exemption; Flyable Aircraft
- (12) Partial Exemption; Master Tapes, Records, Films, or Video Tapes
- (13) [untitled][provides for which law supersedes other law]
- (14) [untitled][provides for a technical assistance advisory committee to advise regarding certain taxability issues]
- (15) Electrical Energy Used in an Enterprise Zone
- (16) Exemptions; Space Activities

¹ Other exemptions are provided for in s. 212.04, F.S., i.e., admissions to certain athletic events or on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations which qualify as a 501(c)(3).

Subsection (7), Miscellaneous Exemptions, provides exemptions for the following:

- (a) Artificial commemorative flowers sold by nationally chartered veterans' organizations.
- (b) Boiler fuels, when certain requirements are met, and with certain exceptions.
- (c) Purchases by commercial fishers of bait intended for a specified use.
- (d) Feeds for poultry, ostriches, and livestock, including racehorses.
- (e) Film rentals.
- (f) Sale of U.S. or Florida flags.
- (g) Purchases of office supplies, equipment, and publications by the Florida Retired Educators Association and its local chapters.
- (h) Sale or rental of guide dogs for the blind and the sale of food or other items for such dogs.
- (i) Room rentals and meals for patients and inmates of any hospital or other facility operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated, or otherwise dependent on special care or attention.
- (j) Sales of utilities to residential households by utility companies who pay the gross receipts tax, and sales of fuels to residential households.
- (k) Meals provided by certain nonprofit volunteer organizations to handicapped, elderly, or indigent.
- (l) 501(c)(3) corporations whose primary purpose is to raise money for military museums. **[HB 4183 strikes this exemption. However, these corporations would be otherwise exempt pursuant to the new exemption created by HB 4183 in s. 212.08(7)(p) for 501(c)(3)'s.]**
- (m) Homes for the aged, nursing homes, or hospices which are nonprofit 501(c)(3) corporations and must qualify under s. 196.1975(2), F.S., or chapter 400, F.S., as applicable. **[HB 4183 strikes this exemption. However, these corporations would be otherwise exempt pursuant to the new exemption created by HB 4183 in s. 212.08(7)(p) for 501(c)(3)'s, and they would not have to meet any other qualifications.]**
- (n) Organizations providing special educational, cultural, recreational, and social benefits to minors which are incorporated pursuant to chapter 617, F.S., or are 501(c)(3) exempt. **[HB 4183 removes the 501(c)(3) requirement.]**
- (o) Religious, charitable, scientific, educational, and veterans institutions and organizations: **[HB 4183 strikes this list of institutions and organizations and inserts "churches".]**

- sales or leases directly to churches² and sales or leases of tangible personal property by churches;
- sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions are exempt when used in carrying out their customary activities; **[HB 4183 strikes this provision. However, to the extent these institutions are 501(c)(3)'s, they would be otherwise exempt pursuant to the new exemption created by HB 4183 in s. 212.08(7)(p) for 501(c)(3)'s.]**
- sales or leases to the state headquarters of qualified veterans' organizations and their auxiliaries are exempt when used in carrying out their customary activities; **[HB 4183 adds to this provision the definition of "veterans' organizations" which is stricken from s. 212.08(7)(o)2. and makes it a stand-alone paragraph.]**
- s. 212.08(7)(o)2. defines:

"religious institutions" -- to mean, in part, churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted; includes a 501(c)(3) nonprofit corporation which owns and operates a Florida television station and a 501(c)(3) nonprofit corporation which provides regular religious services to Florida state prisoners, among other things. **[HB 4183 strikes this definition.]**

"charitable institutions" -- to mean, in part, 501(c)(3) nonprofit corporations and other nonprofit entities, the sole or primary function of which is to provide, or raise funds for organizations which provide, certain listed services, and includes a 501(c)(3) organization that is a blood bank and which is licensed under ch. 403. **[HB 4183 strikes this definition.]**

"scientific organizations" -- to mean, in part, 501(c)(3) scientific organizations, and organizations whose purpose is to protect air and water quality or to protect wildlife and are also 501(c)(3) organizations. **[HB 4183 strikes this definition.]**

"educational institutions" -- to include certain nonprofit libraries, art galleries, performing arts centers, museums, newspapers, educational television or radio network or system, and nonprofit educational cable consortium; and, **[HB 4183 takes a portion of this definition and reestablishes an exemption for sales or leases to state tax-supported schools, colleges, or universities. HB 4183 duplicates this definition in the exemption pertaining to works of art, currently paragraph (dd) which is renumbered in HB 4183 as (cc).]**

² "Church" is not a defined term. "Religious institutions" is defined and it includes churches.

“veterans’ organizations” -- to mean, in part, nationally chartered or recognized veterans’ organizations which hold current exemptions from federal income tax under s. 501(c)(4) or (19) of the Internal Revenue Code. **[HB 4183 moves this definition to the newly created exemption in paragraph (n) for veteran organization headquarters.]**

- (p) resource recovery equipment owned and operated by or on behalf of any county or municipality;
- (q) school books used and school lunches served to students in public, parochial, or nonprofit school for grades 1 through 12;
- (r) a state theater contract organization which is a nonprofit organization incorporated in accordance with ch. 617, designated as a state theater contract organization pursuant to s. 265.289, and is a 501(c)(3); **[HB 4183 strikes this provision. However, these organizations would be otherwise exempt pursuant to the new exemption created by HB 4183 in s. 212.08(7)(p) for 501(c)(3)'s, and would have to meet no other qualifications.]**
- (s) vinous and alcoholic beverages provided by distributors or vendors for the purpose of “wine tasting” and “spirituous beverage tasting”;
- (t) boats temporarily docked in state;
- (u) firefighting and rescue service equipment and supplies purchased by volunteer fire departments;
- (v) professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made, and lists certain exceptions;
- (w) certain newspaper, magazine, and newsletter subscriptions, shoppers, and community newspapers.
- (x) sporting equipment brought into the state, with limitations;
- (y) the charge for chartering any boat and vessel, with the crew furnished, solely for the purpose of fishing;
- (z) food or drinks sold for 25 cents or less from a coin-operated vending machine sponsored by a 501(c)(3) or (4) nonprofit corporation;
- (aa) sale, lease, or rental of a commercial motor vehicle, when certain conditions are met;
- (bb) purchases by a 501(c)(3) nonprofit corporation operating a cemetery, and is operated for the purpose of maintaining a cemetery that was donated to the community by deed;
- (cc) a 501(a) and (c)(3) nonprofit organization that is affiliated with the Coast Guard, and whose primary purpose is to promote safe boating; **[HB 4183 strikes this**

provision. However, these organizations would be otherwise exempt pursuant to the new exemption created by HB 4183 in s. 212.08(7)(p) for 501(c)(3)'s, and would have to meet no other qualifications.]

- (dd) certain works of art ("work of art" is defined), including art sold or used by an educational institution; **[HB 4183 inserts the definition of "educational institutions" stricken from s. 212.08(7)(o)2. into this paragraph.]**
- (ee) the lease of or license to use a taxicab or taxicab-related equipment and services provided by a taxicab company to an independent taxicab operator;
- (ff) aircraft repair and maintenance labor charges;
- (gg) sales or leases to organizations incorporated pursuant to ch. 617, which are exempt under 501(c)(3), and sponsor certain sanctioned golf tournaments;
- (hh) the sale of an electric vehicle between July 1, 1995, and June 30, 2000;
 - (ii) certain electricity uses;
 - (jj) sale, use, lease, rental, or grant of a license to use, made directly to or by a fair association, of real or tangible personal property, and other charges, with exceptions;
- (kk) nonprofit organizations incorporated under ch. 617, or are 501(c)(3)'s, that are designated citizen support organizations in support of state-funded environmental programs or the management of state-owned lands, or to support state parks; **[HB 4183 removed the 501(c)(3) reference.]**
- (ll) income received from admissions to the Florida Folk Festival;
- (mm) solar energy systems;
- (nn) nonprofit organizations incorporated under ch. 617, which are treated as cooperatives under subchapter T of the IRC, whose sole purpose is to offer laundry supplies and services to their members, and whose members are all 501(c)(3)'s;
- (oo) food or drinks furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations, with certain other requirements; and
- (pp) products sold by the nonprofit corporation conducting the correctional work programs.

The Department of Revenue issues consumer's certificates of exemption to nonprofit organization that qualify under s. 212.08(7), F.S. Section 212.084(6), F.S., provides for issuance of temporary certificates to newly organized charitable organizations.

B. EFFECT OF PROPOSED CHANGES:

See "Section by Section Research"

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

No

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

It would simplify the sales tax exemption process for the Department of Revenue.

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

All 501(c)(3) organizations would qualify for sales tax exemption; many currently do not.

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

An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

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

No

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

No

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

Certain 501(c)(3) organizations would be exempt from the sales tax requirements that currently do not qualify for the exemption.

- 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:

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

No

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

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 212.08, 212.084, 196.195, 196.196, 212.0821, 496.404, 564.02

E. SECTION-BY-SECTION RESEARCH:

Section 1 -- Amends s. 212.08, F.S., eliminates certain sales tax exemptions and references to qualification as a 501(c)(3), and establishes a broader, more inclusive exemption for all sales or leases to organizations holding an exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. Most of the specific exemptions eliminated require organizations to be exempt under 501(c)(3) and meet other requirements. By simply making all 501(c)(3) organizations exempt, those organizations whose specific exemption was eliminated remain exempt, and many other 501(c)(3) organizations who could not meet the other requirements, would become exempt. More specifically, section 1 provides as follows:

Amends s. 212.08(1)(a) -- conforms a cross-reference necessitated by the renumbering of the sales tax exemptions in s. 212.08(7);

[ss. 212.08(7)(a) through (k) -- exemptions remain the same.]

Strikes s. 212.08(7)(l) -- regarding the exemption for 501(c)(3) corporations whose primary purpose is to raise money for military museums. **[However, these corporations would be otherwise exempt pursuant to the new exemption in s. 212.08(7)(p) for 501(c)(3)'s.]**

Strikes s. 212.08(7)(m) -- regarding the exemption for homes for the aged, nursing homes, or hospices which are nonprofit 501(c)(3) corporations and must qualify under s. 196.1975(2), F.S., or chapter 400, F.S., as applicable. **[These corporations would be otherwise exempt pursuant to the new exemption in s. 212.08(7)(p) for 501(c)(3)'s and would not have to meet any other qualifications.]**

Amends s. 212.08(7)(n) -- renumbers this exemption for organizations providing special educational, cultural, recreational, and social benefits to minors as "(l)" and removes the reference to s. 501(c)(3). **[If these organizations were otherwise 501(c)(3)'s, then they would be exempt pursuant to the new exemption in s. 212.08(7)(p).]**

Amends s. 212.08(7)(o) --

- removes all references to religious, charitable, scientific, and educational institutions and organizations, including the definitions of "religious institutions", "charitable institutions", "scientific organizations", and "educational institutions"; and, retains the exemption for sales or leases

directly to churches or sales or leases of tangible personal property by churches³, and renumbers that portion of the paragraph as “(m)”. **[To the extent these institutions and organizations are 501(c)(3)’s, they are exempt pursuant to the new exemption in s. 212.08(7)(p) for 501(c)(3)’s.]**

- moves the definition of “veterans’ organizations” to the provision within the exemption regarding veteran organization headquarters, retains the exemption regarding sales or leases to the state headquarters of qualified veterans’ organizations, and numbers that portion of the exemption as a new paragraph “(n)”.

“*Veterans’ organizations*” is defined to mean “nationally chartered or recognized veterans’ organizations, including, but not limited to Florida chapters of [various listed entities] which hold current exemptions from federal income tax under s. 501(c)(4) or (19) of the Internal Revenue Code.”

- utilizes a portion of a stricken definition, and adds language to it, to create an exemption for sales or leases to state tax-supported schools, colleges, or universities, and creates that exemption as a new paragraph “(o)”. **[Private nonprofit schools would qualify for an exemption under the new exemption in s. 212.08(7)(p) if they are exempt under s. 501(c)(3).]**

Creates s. 212.08(7)(p) -- exempts from taxation sales or leases to organizations holding an exemption from federal income tax under s. 510(c)(3) of the Internal Revenue Code.

The current sales tax exemption for nonprofit organization is limited to sales or leases to such organizations “when used in carrying on their customary nonprofit ... activities.” This bill exempts sales and leases to s. 501(c)(3) organizations with no limitation as to use of the property. It is not clear whether this expansion of the exemption is intentional. According to the Department of Revenue [DOR], this bill “would create administrative problems. For example, it would permit use of an organization’s certificate for the private purposes of individuals who could supply funds and have the organization make purchases for them. In addition, the expanded exemption would create an unfair advantage in cases where nonprofit organizations conduct on-going commercial-type activities to raise funds. Under the I.R.C., the income tax exemption does not extend to such activities if regularly carried on as a trade or business. Income from commercial operations with no substantial connection to an organization’s exempt purpose is subject to an ‘unrelated business income tax’”. See DOR Bill Analysis, HB 4183, 3/25/1998, at 6.

Amends s. 212.08(7)(p) -- renumbers the exemption for resource recovery equipment owned and operated by or on behalf of any county or municipality as paragraph “(q)”.

³ “Churches” is not a defined term. The stricken definition of “religious institutions” included churches and “synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on”.

Amends s. 212.08(7)(q) -- renumbers the exemption for school books and school lunches as paragraph "(r)".

Strikes s. 212.08(7)(r) -- regarding state theater contract organizations. **[To the extent these organizations are 501(c)(3)'s, they would be otherwise exempt under the new exemption in s. 212.08(7)(p).]**

[ss. 212.08(7)(s) through (bb) -- remain the same.]

Strikes s. 212.08(7)(cc) -- regarding Coast Guard auxiliaries, which required among other things, to have a 501(c)(3) status. **[Auxiliaries qualifying for this exemption would otherwise be exempt under the new exemption in s. 212.08(7)(p) for 501(c)(3)'s.]**

Amends s. 212.08(7)(dd) -- renumbers the works of art exemption as paragraph (cc), removes a cross-reference in order to comport with other changes made, and inserts an identical definition for "Educational institution" as was stricken from s. 212.08(7)(o).

Amends s. 212.08(7)(ee) -- renumbers the taxicab lease exemption as paragraph "(dd)".

Amends s. 212.08(7)(ff) -- renumbers the aircraft repair and maintenance labor charges exemption as paragraph "(ee)".

Strikes s. 212.08(7)(gg) -- regarding athletic event sponsors. **[Because athletic event sponsors had to be 501(c)(3) organizations, they would otherwise be exempt pursuant to the new exemption in s. 212.08(7)(p) for 501(c)(3)'s.]**

Amends ss. 212.08(7)(hh) through (pp) -- are renumbered as paragraphs "(ff)" through "(nn)", respectively, but otherwise remain the same.

Section 2 -- Amends s. 212.084(6), F.S. -- makes conforming cross-reference changes.

Section 3 -- Amends s. 196.195(4), F.S. -- replaces the cross-reference to s. 212.08(7)(o), F.S., with a cross-reference to s. 212.08(7)(m), (n), (o), and (p), F.S., the four paragraphs that contain the exemptions covered in the existing paragraph (o).

Section 196.195(4), F.S., provides guidance for determining if an organization is a nonprofit organization for purposes of ad valorem taxation. It currently requires that the organization have a valid consumer's certificate of exemption issued under s. 212.08(7)(o), F.S., which currently exempts churches, nonprofit religious institutions, nonprofit charitable institutions, nonprofit scientific institutions, nonprofit educational institutions, and certain veterans' organizations. In addition, the organization must be exempt from federal income taxation under s. 501(c)(3). Currently, veterans' organizations that meet the definition to qualify under s. 212.08(7)(o)1.c., F.S., would not now qualify as nonprofit under s. 196.195(4), F.S., because they are exempt under s. 501(c)(4) or 501(c)(19), I.R.C., not s. 501(c)(3).

In amending the cross-reference in s. 196.195, F.S., to reflect the changes made by the bill, the new paragraph (n) of s. 212.08(7), F.S., is included. This is the veterans' organization paragraph. A veterans' organization described in that paragraph will not be exempt under s. 501(c)(3), and therefore will not meet the second requirement of s. 196.195(4), F.S. The cross-reference causes confusion about whether veterans' organizations still have to prove their nonprofit status by meeting the statutory guidelines for purposes of claiming the ad valorem tax exemption. See Department of Revenue Bill Analysis, HB 4183, March 25, 1998, at 6.

Section 4 -- Amends s. 196.196(1)(c), F.S. -- makes conforming cross-reference changes.

Section 5 -- Amends s. 212.0821(2), F.S. -- makes conforming cross-reference changes.

Section 6 -- Amends s. 564.02(3)(b), F.S. -- makes conforming cross-reference changes.

Section 7 -- Provides an effective date of July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See "Fiscal Comments"

2. Recurring Effects:

See "Fiscal Comments"

3. Long Run Effects Other Than Normal Growth:

See "Fiscal Comments"

4. Total Revenues and Expenditures:

See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See "Fiscal Comments"

2. Recurring Effects:

See "Fiscal Comments"

3. Long Run Effects Other Than Normal Growth:

See "Fiscal Comments"

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

Many organizations that formerly would not have been eligible to receive a sales tax exemption, would now qualify.

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

All 501(c)(3) organizations will be eligible for the sales tax exemption. To the extent these organizations compete for dollars with private for-profit organizations, the 501(c)(3) organizations (not otherwise currently exempt) will experience an economic advantage as the result of their new tax exempt status.

D. FISCAL COMMENTS:

CONSENSUS ESTIMATE	FY 1998-99 Annualized	FY 1998-99 Cash	FY 1999-00 Cash
General Revenue	(\$14.1m)	(\$13.0m)	(\$14.1m)
Solid Waste Mgt. TF	(insignificant)	(insignificant)	(insignificant)
TOTAL STATE IMPACT	(\$14.1m)	(\$13.0m)	(\$14.1m)
Local Gov't Half Cent	(\$1.4m)	(\$1.2m)	(\$1.4m)
Local Option Sales Tax	(\$0.9m)	(\$0.8m)	(\$0.9m)
TOTAL LOCAL IMPACT	(\$2.3m)	(\$2.0m)	(\$2.3m)
TOTAL IMPACT	(\$16.4m)	(\$15.0m)	(\$16.4m)

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a 2/3 vote of the membership of each house in order to enact a "a general law if the anticipated effect of doing so would reduce the authority that municipalities and counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

By adding an exemption to the state sales tax, this bill has the effect of adding an exemption to the local option county sales surtax. Because the annual local revenue loss is estimated to be more than \$1.4 million, this bill will not be exempt from the requirements of subsection (b) due to "insignificant fiscal impact" as permitted under subsection (d) of section 18 of Article VII. Nor does this bill meet any of the other exemptions specified in subsection (d). See also, Senate Staff Analysis And Economic Impact Statement, Proposed CS for SB 522, Ways and Means Subcommittee E, March 2, 1998, at 3.

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

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

The Department of Revenue recommends that two amendments be adopted. The first, to remove the cross-reference to paragraph "(n)" regarding the veteran organization headquarters exemption, which this bill adds to s. 196.195(4), F.S. The second, to amend the newly created exemption in paragraph (p) regarding the exemption for 501(c)(3)'s to include a limitation to property used in carrying on customary nonprofit activities. See Department of Revenue Bill Analysis, HB 4183, March 25, 1998, at 7.

A proponent of this legislation has explained the need for this bill as follows:

The real problem:

If there is a problem in the application of sales tax law to exempt organizations, it is in the construction of the Statutes themselves. Under current law, a nonprofit organization must generally be a 501(c)(3) organization and must also meet the specific criteria set forth in the law under Section 212.08(7)(o). The main categories for sales tax exemption are religious, educational, charitable and scientific. Not all religious 501(c)(3) organizations qualify as religious institutions under Florida sales

tax law. Similarly, not all educational 501(c)(3) organizations qualify for such exemption. The same is true with respect to charitable and scientific organizations. The Legislature has granted specific exemptions to deserving entities which have demonstrated their unique contribution to the welfare of the State of Florida and to the charitable religious and educational community. **The fact that the law exempts only specifically enumerated types of organizations, and not all organizations that are exempt from federal tax under Section 501(c)(3), is one of the main reasons there is confusion among 501(c)(3) organizations as to how the law applies.**

...
The Solution:

For fair, consistent and understandable sales tax exemption law, ... consider the possibility of equating exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code to exemption from sales tax under Florida law. ... [T]hirteen other states in the United States have adopted this approach to sales tax exemption. **Section 501(c)(3) of the Internal Revenue Code is unique in that it is the only federal classification for nonprofit organizations to which charitable contributions are tax-deductible.** This status is not afforded other types of nonprofit organizations. A 501(c)(3) exemption is not "easy" to obtain, as some might think. In order to qualify for 501(c)(3) exempt status with the federal government, an organization must successfully demonstrate that it is [sic] meets a number of very specific criteria and that it is organized and operated exclusively for charitable, religious, educational, scientific or similar purposes. Presentation to the Finance & Taxation Committee, Feb. 5, 1998, by M.E. Bates, CPA, Graham & Cottrill, P.A.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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