

STORAGE NAME: h0967.tu
DATE: March 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 967 (PCB TU 97-01)
RELATING TO: Ad Valorem Taxation (Historic Property)
SPONSOR(S): Committee on Tourism; Rep. Barreiro and others
STATUTE(S) AFFECTED: Chapters 193,194,195, and 196, Florida Statutes
COMPANION BILL(S): SB 1174 (i)

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

- (1) TOURISM YEAS 8 NAYS 0
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I. SUMMARY:

House Bill 967 clarifies and emphasizes that property appraisers, in deriving just valuation, consider a local "historical preservation ordinance" as a factor for arriving at the highest and best use of property.

Contingent upon passage of a House Joint Resolution and a subsequent statewide referendum, this bill permits counties and municipalities to adopt ordinances to grant ad valorem tax exemptions up to 50 percent of the assessed value of certain historic properties or to allow these properties to be assessed solely on the basis of character or use rather than at just valuation. To qualify, the property must be:

- used for commercial purposes or used by a not-for-profit organization under certain sections of the Internal Revenue Code of 1986;
- listed in the National Register of Historic Places or a contributing property to a National Register Historic District;
- regularly open to the public; and,
- maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

Any reduction in property taxes as a result of a use assessment ordinance may be recaptured for up to 10 years if there is a change in the status, use, or qualifying criteria of the property.

The fiscal impact of this bill is largely indeterminate because the amount of lost revenue depends upon the number of local governments that would adopt ordinances granting the proposed ad valorem tax exemptions coupled with the number of qualified historic properties.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article VII, Section 4 of the Constitution of the State of Florida requires that property be assessed at its just valuation or fair market value for ad valorem tax purposes. To arrive at the just or fair market value, a property appraiser considers the eight criteria listed in section 193.011, F.S. These criteria are:

1. cash value or amount a willing purchaser would pay a willing seller;
2. highest and best use of property at present and in the immediate future, taking certain factors into consideration;
3. location;
4. quantity or size;
5. cost and replacement value of improvements;
6. condition;
7. income; and,
8. net proceeds of sale of property after certain deductions.

The second criteria used for determining assessment, highest and best use of property, requires the property appraiser to consider judicial limitations, local or state land use regulations, and moratoriums imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor. To be considered by the property appraiser, the moratorium must prohibit or restrict the development or improvement of property. Although the present statute includes "ordinance," it does not specify historic preservation ordinance.

Section 4(a) of Article VII of the Florida Constitution identifies exceptions to the required just valuation assessment. Land that may be classified and assessed solely on the basis of character or use includes: agricultural land (green belt), land producing high water recharge to Florida aquifers (blue belt), and recreational land. Tangible personal property and livestock may be assessed at a specified percentage of its value or may be exempted from taxation, pursuant to Article VII, Section 4(b). Additionally, Article VII, Section 4(c), or the Save Our Homes provision, limits the annual increase in the assessment of homestead properties to the lower of three percent or the percent change in the prior year's Consumer Price Index.

Subsection 192.001(1), F.S., defines "ad valorem tax" as a tax based on the assessed value of property, and as generally interchangeable with the term "property tax." The "assessed value of property" is defined in subsection 192.001(2), F.S., as an annual determination of just or fair market value of property, the value of homestead property as limited in Article VII, section 4(c) of the State Constitution, or if a property is assessed solely on the basis of character or use or at a specified percentage of its value, pursuant to Article VII, sections 4(a) or 4(b) of the State Constitution.

Current Incentives for Preservation of Historic Properties

Tax Exemptions

Article VII, section 3 of the Florida Constitution permits municipalities and counties to authorize historic preservation ad valorem tax exemptions to owners of historic properties engaging in restoration, rehabilitation, or renovation in accordance with approved historic preservation guidelines. Implementation of these exemptions is found

in ss. 196.1997, and 196.1998, F.S., including the requirement of the enacting local government to pass an ordinance.

The following two types of tax exemptions are provided:

1. Up to 100 percent of the assessed value of all improvements for private property owners.
2. Up to 100 percent of the assessed value of historic property used for nonprofit or governmental purposes that: (1) is regularly and frequently open for the public's use; and (2) has undergone rehabilitation or renovation equal to at least 50 percent of the total assessed value of the property.

Both types of ad valorem tax exemptions are subject to additional requirements as follows:

- exemptions apply only to taxes levied by the unit of government granting the exemption and do not apply to taxes pledged to the repayment of debt;
- property owners must enter into a covenant requiring maintenance;
- improvements must be in keeping with the character of the property for the exemption period;
- historic properties must be listed on the National Register of Historic Places or designated as landmarks under a local historic preservation ordinance, or must contribute to the significance of a National Register historic district or a historic district designated by local ordinance (eligible historic properties may be owner-occupied residences or income-producing properties);
- the period of exemption may be for up to 10 years as specified in the local ordinance; and,
- property must be undergoing renovations or have undergone renovations since the ordinance was adopted.

Deferral of Tax Liability For Historic Properties

In addition to the local option program specified in the Florida Constitution, s. 193.505, F.S., provides a mechanism for owners of improved historically significant real property to defer tax liability. The owner either conveys all development rights to the county or enters into a covenant with the local governing body to not use the property for any purpose inconsistent with historic preservation. Upon expiration of this agreement, the deferred tax liability, that is, the difference between the taxes due on the property assessed at its use value rather than its fair market value, becomes due within 90 days. Although this tax deferral program has been in existence since 1984, it has never been used. The following are possible reasons why the tax deferral provision is not used:

- A property owner has no way of knowing in advance how much the deferral amount will be.
- A sizeable tax bill can be due at the end of the deferral period.
- The property owner loses unrestricted rights to develop the property to its fullest economic advantage.

Definitions

Not-for-profit organizations included in section 501(c)(3) of the Internal Revenue Code (IRC) are corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. This classification also includes certain corporations, funds, or foundations that foster national or international amateur sports competitions, or are involved in the prevention of cruelty to children or animals. Not-for-profit organizations in section 501(c)(6) of the IRC are business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues. No part of the net earnings of such organizations can benefit any private shareholder or individual.

Listing in the National Register is a formal process requiring extensive documentation. When a property is listed in the National Register of Historic Places, its local, state, or national historic or architectural significance is well-established. In Florida, according to the Florida Department of State, there are 1,050 sites listed in the National Register of Historic Places and 191 National Register Historic Districts. Twelve of the Historic Districts are archeological districts and do not have structural improvements on them.

B. EFFECT OF PROPOSED CHANGES:

House Bill 967 expressly requires the consideration of a historic preservation ordinance when determining the highest and best use of property.

This bill permits counties and municipalities, by ordinance, to allow historic properties that meet certain criteria: a) up to a 50 percent exemption from ad valorem taxes, or b) to be assessed by the property appraiser solely on the basis of character or use. The exemption or the character or use assessment only applies to the jurisdiction adopting the ordinance. To be eligible, the historic property must be:

- used for commercial purposes or used by a nonprofit organization under 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986;
- listed in the National Register of Historic Places, a contributing property to a National Register Historic District, or be designated as a historic property or a contributing property to a historic district under a local preservation ordinance,
- regularly open to the public; and,
- maintained in good repair and condition to preserve the historic value and significance of the property.

Regularly open to the public is defined as open for a minimum of 40 hours per week for 45 weeks of the year or an equivalent of 1800 hours per year. A fee may be charged if it is comparable to other fees for similar admissions in the same geographic area. If a fee is charged, it will not be exempt from any applicable admissions tax.

The property owner must apply for the assessment classification each year. If denied, the property owner may appeal to the value adjustment board. If the assessment classification is granted, the property appraiser considers the following use factors:

- size of the property;
- condition of the property;

- present market value of the property as historic property used for commercial or certain nonprofit purposes; and,
- income from the property.

Any reduction in the tax due to the historic property classification is subject to recapture. If, after qualifying for and being granted the classification, the historic designation status or the use of the property changes or the property fails to meet other qualifying criteria, then the property owner is liable for up to the past 10 years of the deferred tax liability. The liability is for an amount equal to the difference between the total amount of taxes that would have been due if the property received a "just value" assessment and the total amount of taxes actually paid. Additionally, the recaptured tax is payable to the county tax collector within 90 days.

Exemption Factors:

The county or municipality is responsible for notifying the property appraiser of the adoption, the repeal, the time period, or the expiration of the exemption ordinance. The ordinance must specify that the exemption will only apply to taxes levied by that particular unit of government. The exemption will not apply to taxes levied for the payment of bonds nor to taxes authorized by a vote of the electors pursuant to Section 9(b) or Section 12, Article VII of the Florida Constitution. If part of the property is used for the specified qualifying purposes, then only that part qualifies for the exemption.

Except for section 1 of HB 967, which takes effect upon becoming a law, the effective date of this bill is January 1, 1999, contingent upon voter approval of a statewide constitutional amendment at the November 1998 election.

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?

If the constitutional amendment passes, and a local governmental entity chooses to adopt the ordinance; then, authority to make rules, and adjudicate disputes would be imposed on the local governmental entity.

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

If the constitutional amendment passes, and a local governmental entity chooses to adopt the ordinance; then, new responsibilities, obligations or work for other governmental or private organizations or individuals would be imposed.

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

No.

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?

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?

It could reduce certain local tax revenues, if adopted by the local governmental entity.

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

N/A.

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?

N/A.

- 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:

- (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?

N/A.

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?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 193.011(2), F.S., to add historic preservation ordinance as a factor to be considered to arrive at the highest and best use of property at present and in the immediate future. This section is effective upon the act becoming a law.

Section 2 creates s. 193.503, F.S., which allows counties and municipalities to adopt an ordinance providing criteria for classifying and assessing commercial and certain not-for-profit historic property on the basis of character or use. The use assessment will only apply in the jurisdiction adopting the ordinance. The local jurisdiction is responsible for notifying the property appraiser of the adoption or expiration of the ordinance.

The property appraiser will classify any eligible property in this new classification for the purposes of the taxes levied by the governing body that adopted the ordinance. For all other purposes, the property shall be assessed pursuant to s. 193.011, F.S. The property appraiser may require the property owner to furnish information regarding the use of the property. To qualify for the classification, the property must be:

- used as a commercial property or by a not-for-profit organization under sections 501(c)(3) or 501(c)(6) of the Internal Revenue Code of 1986;
- listed in the National Register of Historic Places, a contributing property to a national Register Historic District, or designated as a historic property or as a

- contributing property to a historic district under the terms of a local preservation ordinance;
- regularly open to the public, which means open for at least 1800 hours per year or 40 hours per week for 45 weeks per year; and,
 - maintained in good repair and condition to preserve the historic value and significance of the property.

When assessing the property, the property appraiser shall consider the quantity and size, the condition, the income, and the present market value of the property as historic property used for commercial or certain nonprofit purposes.

The property owner must apply for the classification by March 1 of each year. Absent an application, the property must be assessed according to s.193.011, F.S. If a property owner's application is denied, the property owner may appeal to the value adjustment board. The property appraiser must notify the property owner in writing of the denial, the right to appeal, and the filing deadline. The board may review all the property classified by the appraiser. The appraiser is required to list all owners and applicants showing full valuation, valuation under this classification, and whether the classification was granted.

The property appraiser reports the "classified use value" and the "just value" of qualifying properties. If the owner changes the use or status of the property so that it no longer meets the qualifying criteria, the owner becomes liable for the deferred tax liability for up to the past 10 years in which the property received the use assessment. The governmental taxing unit will record a written instrument against the title to the real property until the deferred tax liability is paid. The deferred taxes are to be paid within 90 days of the change in status. The tax collector collects and distributes the taxes to the appropriate local jurisdiction and annually reports the amount of collected deferred tax liability.

Section 3 amends s. 194.011(3), F.S., to provide a schedule and conditions for filing a petition to the value adjustment board if the application for classification as historic property used for commercial or certain nonprofit purposes is denied by the property appraiser.

Section 4 amends s. 194.032(1), F.S., to provide a timetable for the value adjustment board to hear appeals relating to the denial by the property appraiser of the classification as historic property used for commercial or certain nonprofit purposes.

Section 5 amends s. 194.037(2), F.S., to require the disclosure of the results of the value adjustment board hearings regarding "Historic Commercial or Nonprofit" property.

Section 6 amends s. 195.073(1), F.S., to provide for a classification on the assessment rolls for "Historic property used for commercial or certain nonprofit purposes."

Section 7 amends s. 195.096(3), F.S., regarding review of the assessment rolls. This section requires that the real property class of historic property used for commercial or certain nonprofit purposes be reviewed and published independently whenever, in the previous tax roll, the class constituted 5 percent or more of the total assessed value of real property in a county and to require reviews of assessment rolls to evaluate whether the classifications of historic property used for commercial and certain nonprofit purposes were granted in accordance with law.

Section 8 creates s. 196.1961, F.S., to give counties and municipalities the authority to adopt an ordinance to allow ad valorem tax exemptions of up to 50 percent for historic property that is:

- used for commercial purposes or used by a not-for-profit organization under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;
- listed in the National Register of Historic Places, a contributing property to a National Register Historic District, or designated as a historic property or as a contributing property to a historic district under the terms of a local preservation ordinance; and
- regularly open to the public.

“Regularly open to the public” is defined as regular hours when the public may visit to observe the historically significant building and means a minimum of 1800 hours per year, which is 40 hours per week for 45 weeks. A fee may be charged; however, it must be comparable to other admission fees in the same geographic area.

It is the responsibility of the governing authority to notify the property appraiser of the adoption, repeal, time period, or expiration of the ordinance. The ordinance must specify that the exemption only applies to taxes of the specific unit of government, excluding bonds or authorized taxes by a vote of the electors. Only the portion of property used for the qualifying purposes will be exempt. The property must be maintained.

Section 9 provides that, except as otherwise stated, this act shall take effect on the effective date of the amendment to the Florida Constitution that authorizes this act, if approved by the electors in November 1998.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue will incur costs related to the development and distribution of application forms.

2. Recurring Effects:

The Department of Revenue will incur minimal costs related to the printing of application forms.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The bill has a negative indeterminate fiscal impact on counties and municipalities that choose to grant historic exemption or classification ordinances.

The portion of this bill that adds historic preservation ordinance to the factors to be considered in arriving at the highest and best use of the property is clarifying language and is not expected to affect revenue.

Counties and municipalities that voluntarily elect to authorize the character or use assessment classification for certain historic properties or to authorize up to 50% exemptions could have a reduction in taxable values within their jurisdiction.

The amount of any reduction is indeterminate; however, the Division of Historical Resources of the Department of State estimates that there are approximately 26,500 individual parcels within the national register listing in Florida. Of these, approximately 3,900 are likely to be eligible property, either used for commercial purposes or owned by a not-for-profit organization. Assuming all the property receives the full 50% exemption and the average property has a taxable value of \$200,000, the taxable value loss could be as much as \$390 million statewide for properties on the national register listing. This could result in a tax loss to the county or municipality or a tax shift to other property of \$5.1 m (\$390 m X 13.16 mills). Additionally, local governments may add other properties to the classification, further reducing taxes.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

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2. Direct Private Sector Benefits:

Increased economic activity could be experienced from owners of historic properties who operate income-producing businesses at their historic properties. Not-for-profit organizations could be encouraged to locate in historic buildings.

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

To the extent a business is located in a historic property, it may enjoy a cost advantage over competing business.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

House Bill 967 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:

House Bill 967 authorizes but does not require counties or municipalities to enact historic exemption or classification ordinances; therefore, it does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

House Bill 967 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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