

STORAGE NAME: h1807a.ca

DATE: April 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1807

RELATING TO: Port or Aviation Authorities

SPONSOR(S): Representative Fuller

COMPANION BILL(S): SB 2550 (i)

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

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
 - (2) FINANCE & TAXATION
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for the creation of a Port or Aviation Authority Ad Valorem Tax Improvement Fund in each county in which a port or aviation authority is operated by a legislatively created entity. The bill provides for deposit of ad valorem taxes paid by such authority to be deposited in the fund, for use by the authority to enhance its facilities. The bill authorizes the tax collector to retain an amount for administrative costs. The bill is repealed January 1, 2030, unless reviewed and saved from repeal by legislative action. This bill does not impact the general revenue fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Generally, property owned by the state or its political subdivisions is immune from ad valorem taxation regardless of its use, and property owned by a municipality is exempt from ad valorem taxation if it is used exclusively for municipal or public purposes.

State Immunity

While immunity from taxation for state property is not specifically stated in the Constitution, the courts have consistently ruled that such is the case. As early as 1957, in Park-N-Shop Inc. vs. Sparkman (99 so.2d 571 (Fla. 1957)), a case brought by taxpayers complaining that the lack of taxes on county owned land allowed the private lessee a competitive advantage. The Florida Supreme Court ruled that county property was immune from taxation.

In Dickinson vs. City of Tallahassee (325 so.2d 1 (Fla 1975)), a case involving the levy of a city utility tax on state government, the Florida Supreme Court ruled on state immunity from taxation under the 1968 Florida Constitution. The Court concluded that the immunity from tax was inherent in both the state and its political subdivisions, including counties and school districts.

Municipal Exemption

Article VII, section 3(a) of the Florida Constitution states that “all property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation, but only if it is used exclusively by the municipality for municipal or public purposes.

Based on this provision, the determination of what constitutes a municipal or public purpose becomes important. Subsection 196.012(6), Florida Statutes, lists the use of property by a lessee of government owned property, specifically including municipalities and special districts, which are deemed functions serving a governmental, municipal or public purpose.

Special Districts

In Canaveral Port Authority vs. Department of Revenue, (690 so2d. 1226 (Fla 1996)), the Florida Supreme Court upheld the Fifth District Court of Appeals decision affirming Brevard County’s authority to assess ad valorem taxes on 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.

The Court reviewed section 315.11, Florida Statutes, (which provides port authorities with statutory exemption from various state and local taxes) in conjunction with the provisions of section 196.199, Florida Statutes, and concluded that the exemption in section 315.11, Florida Statutes, had been limited by the Legislature in adopting section 196.199 Florida Statutes. Therefore, ad valorem tax exemption for fee interests in port authority property would only be granted when such property was being used for performing a governmental, municipal, or public purpose as defined in section 196.012(6), Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for the creation of a Port or Aviation Authority Ad Valorem Tax Improvement Fund in each county in which a port or aviation authority is operated by a legislatively created entity. The bill provides for ad valorem taxes paid by such authority to be deposited in the fund, for use by the authority to enhance its facilities. The bill authorizes the tax collector to retain an amount for administrative costs. The bill is repealed January 1, 2030, unless reviewed and saved from repeal by legislative action. The purpose of the bill is to effectuate a level playing field between port and aviation operations which are owned and operated by counties and receive ad valorem tax exemptions and those that are owned and operated by a port or aviation authority.

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?

N/A

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

Administering the trust fund may create a slight increase in administrative/accounting responsibilities to the Tax Collectors in each affected county.

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

N/A

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?

N/A

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

N/A

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

N/A

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?

N/A

3. Personal Responsibility:

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

N/A

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

N/A

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?

N/A

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. STATUTE(S) AFFECTED:

Creates part VII of chapter 163, Florida Statutes, consisting of sections 163.71, 163.72, 163.73, 163.74, and 163.75.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates part VII of chapter 163, Florida Statutes, consisting of sections 163.71, 163.72, 163.73, 163.74 and 163.75.

Section 163.72, Florida Statutes, provides a definition of a "port or aviation authority."

Section 163.72, Florida Statutes, states the purpose of the bill is to effectuate a level playing field between port and aviation operations which are owned and operated by counties and receive ad valorem tax exemption and those that are owned and operated by a port or aviation authority.

Section 163.73, Florida Statutes, provides that each county in which a port or aviation authority is located shall establish an Ad Valorem Tax Improvement Fund; provides for administration by the tax collector.

Section 164.74, Florida Statutes, directs the distribution of the Port or Aviation Authority Ad Valorem Tax Improvement Fund to the authority annually, on or before April 1.

Section 163.75, Florida Statutes, provides for repeal on January 1, 2030, unless reviewed and saved from repeal by legislative action.

Section 2: This act takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

The bill has been submitted to the Revenue Impact Conference for analysis. The impacts of reductions in ad valorem taxes to affected local governments is unknown at this time.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of counties and municipalities.

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

The bill does not reduce the amount of state tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs approved the bill, with four amendments, at their meeting on April 14, 1999. The amendments provide the following: Amendment 1 provides that a community may not use the estimate of taxable value for all port or aviation ad valorem tax towards local effort. (state-shared revenue requirement.) Amendment 2s provides certain entities immunity from taxation. Amendment 3 adds a severability clause. Amendment 4 provides the act takes effect upon becoming law and shall apply to the 1999 ad valorem tax rolls.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

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