

STORAGE NAME: h0345s1a.ft

DATE: March 23, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS/HB 345

RELATING TO: Educational property tax exemption

SPONSOR(S): Committee on Real Property and Probate and Representative Brummer

COMPANION BILL(S): SB 974 (i)

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

- (1) Real Property and Probate YEAS 8 NAYS 0
- (2) Finance and Taxation YEAS 15 NAYS 0
- (3) Education Appropriations
- (4)
- (5)

I. SUMMARY:

CS/HB 345 provides that if title to land used exclusively for educational purposes is placed into an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity which owns the educational institution using the land, then for the purposes of the tax exemption contained in section 196.198, F.S., the institution is deemed to own the land.

See "Amendments or Committee Substitute Changes" Section VI, herein, for the amendments made by CS/HB 345.

There is no fiscal impact on state government and the fiscal impact on local governments is insignificant.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article VII, section (9), of the Florida Constitution provides that counties, school districts and municipalities shall be authorized by law to levy ad valorem taxes. Article VII, section 3(a), of the Florida Constitution further provides: "Such portions of property as are **used predominantly** for educational, literary, scientific, religious or charitable purposes *may be exempted* by general law from taxation." (emphasis added).

Section 196.198, F.S., requires, with regard to the exemption for educational purposes, that educational property is deemed "owned" by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property. Additionally, s. 196.198, F.S., requires that "use" of the property be exclusive, and not merely predominant: "Educational institutions¹ within this state and their property used by them or by any other exempt entity or educational institution *exclusively*² for educational purposes shall be exempt from taxation."

The following institutions are deemed to be wholly educational in purpose and use, and are therefore statutorily exempt from ad valorem taxation:

- ☛ Sheltered workshops which provide rehabilitation and retraining of disabled individuals and which are certified as exempt under s. (d) of the federal Fair Labor Standards Act of 1938, as amended³, are exempt from certification, accreditation and membership requirements set forth in s. 196.012, F.S.;
- ☛ Properties of college fraternities and sororities which are certified by the president of the college to the appropriate property appraiser as being essential to the educational process; and
- ☛ Properties used for public fairs and expositions, to the extent used for educational purposes. Fla. Stat. §196.198.

¹ Section 196.012(5), F.S., defines "educational institution" to mean:

a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools; a nonprofit private school the principal activity of which is conducting regular classes and courses of study accepted for continuing postgraduate dental education credit by a board of the Division of Medical Quality Assurance; educational direct-support organizations created pursuant to ss. 229.8021, 240.299, and 240.331; and facilities located on the property of eligible entities which will become owned by those entities on a date certain.

² Section 196.012, F.S., defines "exclusive use of property" as use of property solely for exempt purposes. Such purpose may include more than one class of exempt use.

³ There are several (d)'s in the federal Fair Labor Standards Act of 1938, as amended, and this analyst, upon review of the act and conversing with several individuals, was unable to determine which (d) was applicable to this section.

Moreover, s. 196.198, F.S., provides that property is also deemed to be used for educational purposes, and therefore exempt from ad valorem taxation, when the institution has taken affirmative steps to prepare the property for educational use.⁴

Conversely, an entity using its property for charitable, religious, scientific and literary purposes are only required to use its property *predominantly*⁵ for such purpose in order to qualify for tax exemptions, not *exclusively*. Section 196.196, F.S. This property is only exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use; as opposed to properties exclusively used for educational purposes which are totally exempt from ad valorem taxation. Fla. Stat. §196.192.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 345 adds the following provision to s. 196.198, F.S., regarding the educational property exemption:

If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns⁶ an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution for the purposes of this exemption.

For purposes of qualifying for an ad valorem tax exemption, this bill provides that land is considered to be property owned by the educational institution, for the purposes of this exemption, if the trust grantor owns 100 percent of the entity which owns the educational institution that is using the land exclusively for educational purposes.

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?

No.

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

No.

⁴ Section 196.198, F.S., defines affirmative steps as "environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use."

⁵ "Predominant use of property" means "use of property for exempt purposes in excess of 50 percent but less than exclusive." Fla. Stat. §196.012(3).

⁶ An entity which operates an educational institution may contract out operational services to other entities. Ultimately, the grantor may not own the corporation which "operates" the institution.

- 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?

If local governments raise local property tax rates in order to offset the revenue loss caused by this exemption, taxpayers who do not receive this exemption may see their taxes increase.

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

No.

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

This bill may reduce tax revenues by exempting from the property tax land owned by certain irrevocable inter vivos trusts and used exclusively by educational institutions.

- 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:

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

No.

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

No.

3. Individual Freedom:

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

Yes. By extending the educational exemption to property owned by irrevocable inter vivos trusts, this bill grants property owners greater flexibility in conducting their affairs.

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

No.

4. 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

C. STATUTE(S) AFFECTED:

This bill amends s. 196.198, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 196.198, F.S., allowing certain property held by an inter vivos trust to qualify for the educational exemption. Section 2 specifies that this bill will take effect upon becoming law.

III. FISCAL ANALYSIS & 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:

This bill will have an insignificant negative effect on local 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:

Private entities which transfer title to land being used exclusively for educational purposes to an irrevocable inter vivos trust may benefit from an ad valorem tax exemption.

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

None.

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 or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not significantly reduce the revenue raising authority of local governments.

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

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

V. COMMENTS:

CS/HB 345 is similar to SB 970 which passed the Senate during the 1998 legislative session. On May 1, 1998, SB 970 died in Messages in the House.

It is possible that CS/HB 345 may affect only one entity in the State of Florida, Florida Technical College. Dr. Neil Eulaino owns Florida Technical College which received an ad valorem tax exemption until 1994. In 1993, Dr. Eulaino placed the deed to the land upon which Florida Technical College is situated into the Neil Eulaino Family Trust, an irrevocable family support trust.⁷ In 1994, the Orange County Property Appraiser denied Florida Technical College an ad valorem tax exemption on the basis that the entity owning 100 percent of the educational institution is not owned by the identical persons who own the property, since Dr. Eulaino owns the institution and the trust now owns the land.⁸ Florida Technical College had a property tax liability of \$19,566.96 in 1998.

Pursuant to CS/HB 345, the land is deemed to be property owned by the educational institution even when the title is in an irrevocable inter vivos trust, therefore, the Florida Technical College may qualify for an ad valorem tax exemption.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 16, 1999, the Committee on Real Property and Probate adopted four amendments to the original bill, and made the bill, as amended, a Committee Substitute. All four amendments were technical and clarifying amendments. Specifically, CS/HB 345 differs from HB 345 in that it:

- Changes the term "corporation" to "entity" in order to remain consistent with the terminology used in the existing law;
- Changes the term "considered" to "deemed" in order to remain consistent with the terminology used in the existing law;

⁷ Senate Staff Analysis and Economic Impact Statement, Committee on Community Affairs, SB 970 (March 26, 1998).

⁸ Jeff Kielbasa, Deputy General Counsel of the Department of Revenue, letter to Nancy Stewart, Esq. (March 21, 1997).

STORAGE NAME: h0345s1a.ft

DATE: March 23, 1999

PAGE 8

- Inserts "for purposes of this exemption" after "educational institution" on page 2, line 7 of the original bill to avoid obscure ownership issues; and
- Changes the word "operates" to "owns" in order to allow the educational institution to qualify for an ad valorem tax exemption under the current law which provides that the trust grantor must own 100 percent of the entity which owns the educational institution that is using the land for educational purposes.

VII. SIGNATURES:

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