

STORAGE NAME: h0345.rpp
DATE: February 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property and Probate
ANALYSIS**

BILL #: HB 345
RELATING TO: Educational property tax exemption
SPONSOR(S): Representative Frederick C. Brummer
COMPANION BILL(S): SB 974 (i)

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

- (1) Real Property and Probate
- (2) Finance & Taxation
- (3) Education Appropriations
- (4)
- (5)

I. SUMMARY:

The Florida Constitution provides that counties, school districts and municipalities shall be authorized by law to levy ad valorem taxes. Florida Statutes provide that the following property is subject to ad valorem taxation, unless otherwise expressly exempted: all real and personal property in this state; all personal property belonging to persons residing in this state; and all leasehold interests in property of the United States, of the state, or of any political subdivision, municipality, agency, authority or other public body corporate of the state.

The Florida Constitution also expressly exempts institutions from ad valorem taxation which *use* their property for educational, charitable, religious, scientific or literary purposes. Florida Statutes require that in order to qualify for an educational tax exemption, all property must not only be owned by an exempt entity, but *used* by the entity *exclusively* for educational purposes. However, exemptions for charitable, religious, scientific or literary purposes apply when the entity uses its property *predominantly* for such purpose, not *exclusively*.

The following entities are considered wholly educational in use and are exempt from ad valorem taxation to the extent of that use: sheltered workshops providing rehabilitation and retraining of disabled individuals, property of college fraternities and sororities which are essential to the educational process and property used by public fairs and expositions.

Property is deemed to be used for an educational purpose if it is owned by an educational institution and that institution takes affirmative steps to prepare the property for educational use. Property that is used exclusively for educational purposes is deemed to be owned by the educational institution if the entity owning 100 percent of the institution is owned by the identical persons who own the property.

This bill 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 corporation that operates the educational institution using the land, then for the purposes of this tax exemption, the institution is deemed to own the land, not the trust.

See "Comments" section herein for concerns regarding this bill.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution provides that counties, school districts and municipalities shall be authorized by law to levy ad valorem taxes. Fla. Const. art.VII, § 9. Florida Statutes subject the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; all personal property 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. Fla. Stat. §196.001.

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." Fla. Const. art.VII, § 3(a)(emphasis added). Florida statutory law provides that all property *owned* by an exempt entity and used *predominantly* for exempt purposes will be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use. Fla. Stat. §196.192. Florida law also provides that all property *owned* and *exclusively used* for exempt purposes shall be *totally* exempt from ad valorem taxation.

Section 196.198, F.S., requires, with regard to an exemption for educational purposes, that educational property is to be 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

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.

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.

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 required to use its property *predominantly*⁵ for such purpose in order to qualify for tax exemptions, not *exclusively*. Section 196.196, F.S. As previously mentioned, 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:

HB 345 adds the following provision to s. 196.198, F.S., regarding 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 corporation that operates⁶ an educational institution that is using the land exclusively for educational purposes, the land is considered to be property owned by the educational institution.

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 if the trust grantor owns 100 percent of the corporation that *operates* the educational institution that is using the land exclusively for educational purposes. However, this new provision, even taking into consideration ownership of the land by the trust, does not otherwise meet the requirements for a tax exemption set forth under s. 196.198, F.S., which provides that “property used exclusively for educational purposes shall be 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.*” To the contrary, the grantor only owns the entity which *operates* the educational institution and does not necessarily own the educational institution.

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.

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.

Nonetheless, one Legislature does not bind another, thus the criteria for qualifying for an ad valorem tax exemption may be changed by subsequent legislatures. However, whatever changes are made must comport with constitutional requirements.

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.

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?

This bill may reduce taxes, both rates and revenues regarding educational institutions which transfer title to land into an irrevocable inter vivos trust across this state.

- 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:

- 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?

No.

- 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:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue determined that there will be no fiscal impact to implement the provisions of this bill.

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 may reduce tax revenues since educational institutions which hold title in an irrevocable inter vivos trust may qualify for an ad valorem tax exemption. Florida Technical College was taxed in 1997 in the amount of \$18,768.55, and in 1998 in the amount of \$19,566.96.⁷ If this bill passes, this entity may become tax exempt and local governmental revenues will be lowered accordingly.⁸

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:

⁷ Telephone conversation with Richard Crotty, Orange County Tax Appraiser, in Tallahassee, Fl. (February 9, 1998).

⁸ This analyst is unaware of any other institution that may benefit from this change in the law.

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 reduce the authority that municipalities or counties have to raise revenue for educational institutions where the title is held in an irrevocable inter vivos trust.

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:

This bill is identical 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 this bill may affect only one entity in the State of Florida, Florida Technical College.⁹ 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.¹⁰ 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.¹¹

Pursuant to this bill, the land is considered to be property owned by the educational institution even when the title is in an irrevocable inter vivos trust. However, it is uncertain whether this bill will allow Florida Technical College to qualify for an ad valorem tax exemption. The Orange County Property Appraiser expressed concerns that under this bill, the grantor owns the entity which merely *operates* the educational institution, the entity does not *own* the educational institution.¹² This is inconsistent with the provisions of s. 196.192, F.S., which require an entity to *own* and use the property exclusively for exempt purposes. Pursuant to s. 196.192, F.S., in order to obtain a tax exemption when title is held in an irrevocable trust, the entity would be required to "own" the educational institution and not merely "operate" the institution.

A few technical concerns include:

- 1) on page 2, line 4, the term "corporation" may need to be changed to "entity" in order to remain consistent with the terminology used in the existing law;

⁹ Telephone conversation with Lena Quarez, Lobbyist, in Tallahassee, FL (February 4, 1999).

¹⁰ Senate Staff Analysis and Economic Impact Statement, Committee on Community Affairs, SB 970 (March 26, 1998).

¹¹ Jeff Kielbasa, Deputy General Counsel of the Department of Revenue, letter to Nancy Stewart, Esq. (March 21, 1997).

¹² Telephone conversation with Richard Crotty, The Orange County Property Appraiser, in Tallahassee, FL. (February 9, 1999).

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- 2) on page 2, line 6, the term "considered" may need to be changed to "deemed" in order to remain consistent with the terminology used in the existing law; and
- 3) on page 2, line 7, after the phrase "educational institution" the following clarifying language could be added: "for purposes of this exemption."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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