STORAGE NAME: h1899z.ca ****FAILED TO PASS THE LEGISLATURE****
DATE: May 17, 2000

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS

BILL #: 1ST ENG/HJR 1899

RELATING TO: Tax Exemptions/Seaports

SPONSOR(S): Representative Maygarden and other

TIED BILL(S): None

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

(1) COMMUNITY AFFAIRS (FRC) YEAS 8 NAYS 0
(2) FINANCE & TAXATION (FRC) YEAS 10 NAYS 3
(3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS YEAS 10 NAYS 0
(4)
(5)

I. SUMMARY:

HJR 1899, 1st Eng., is a House Joint Resolution proposed to amend Article VII, Section 3, of the Florida Constitution. The Resolution provides that property that is not otherwise exempt from taxation and that is owned by a municipality or special district and used for seaport purposes may be exempted from taxation, as provided by general law. The resolution amends Article VII, Section 3, as follows:

> (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. Property that is not otherwise exempt from taxation and that is owned by a municipality or special district and used for seaport purposes may be exempted from taxation, as provided by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot.

There is an estimated fiscal impact of $47,000 associated with advertising this amendment.

The constitutional amendment will be effective on January 1, 2001, if approved by the voters of Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes [X]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Ad Valorem Taxation

The Florida Constitution provides that counties, school districts, and municipalities must be authorized by law to levy ad valorem taxes. (Fla. Const. art. VII, § 9.) Section 196.001, F.S., subjects 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.

Article VII, Section 2, of the Florida Constitution requires:

> "All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . ."

Section 196.001, F.S., provides that the following property is taxable, unless specifically exempted:

> All real and personal property in the state 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.

Just Valuation

Article VII, Section 4, of the Florida Constitution requires:

> "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . ."

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

Immunity and Exemptions from Ad Valorem Taxation

Immunity from Taxation

State and county government immunity from taxation is well established in Florida's jurisprudence. In *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571, 573--74 (Fla.1958), the Florida Supreme Court said that:

> "property of the state and of a county . . . is immune from taxation, and we say this despite the references to such property in (statutes) as being exempt."

In *Alford v. State*, 107 So.2d 27, 29 (Fla.1958), the Court explained and reiterated that view.

> "Although our statutes specifically exempt such State owned lands, such exemption is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government. . . . "

Governmental Purpose Exemption

Unlike state and county property, municipal property is not immune from taxation. However, municipal property is exempt from taxation under Article VII, Section 3(a) of the State Constitution.

Article VII, Section 3 of the Florida Constitution provides for exemptions from ad valorem taxation. Paragraph (a) provides:

> "All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation."

In *Canaveral Port Authority v. Department of Revenue*, 690 So.2d, 1226 (1996), the Court limited immunity from taxation, as follows:

> "Accordingly, we find that only the State and those entities which are expressly recognized in the Florida Constitution as performing a function of the state comprise 'the state' for purposes of immunity from ad valorem taxation. What comprises 'the state' is thus limited to counties, entities providing the public system of education, and agencies, departments, or branches of state government that perform the administration of the state government." (Footnotes deleted)

As a result, special district property is treated as exempt under current law, rather than immune from taxation.

Leased Government Property

The permanent owner of leasehold property, not the lessee, is generally taxed for the full value of the property. The government will, however, tax the equitable holder of real estate, rather than the holder of bare legal title. *Bancroft Investment Corp. V. City of*, 27 So.2d 162 (Fla. 1946). A lessee holding government property can be taxed if the property is used for predominantly private purposes and not otherwise exempt. *R.R. Walden v. Hillsborough County Aviation Authority*, 375 So.2d 283 (Fla. 1979). The Legislature cannot direct the assessment of leasehold interests on any basis other than fair market value. *Schultz v. TM Florida-Ohio Realtly Ltd.*, 577 So.2d 573 (Fla. 1991).

Property owned by the state, or other governmental entities immune from taxation, when leased, remains immune from taxation. *Park-N-Shop, Inc. V. Sparkman*, 99 So.2d 571 (Fla.). Leases by municipalities and other public bodies which are not immune from taxation, receive different treatment. If such an entity leases property to a tenant who performs an intrinsically public function, the property is exempt from taxation. *Hillsborough County Aviation Authority v. R.R. Walden*, 210 So.2d 193 (Fla. 1968). If, on the other hand, a municipality leases property to a tenant who uses it for predominantly private purposes, the property loses its tax exempt status, unless otherwise exempt. *City of Orlando v. Hausman*, 534 So.2d 1183 (Fla. 5th DCA 1988).

Section 196.199, F.S., provides the conditions under which property owned and used by governmental units is exempt from taxation. Paragraphs (a), (b) and (c) of subsection (1) exempt from ad valorem taxation property owned by the United States with certain exceptions, property of the state used for governmental purposes, and all property of the political subdivisions and municipalities of the state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes, except as otherwise provided by law.

Subsection (2) of section 196.199, F.S., provides the conditions under which property owned by governmental entities, but leased to nongovernmental entities, is exempt from taxation. Paragraph (a) specifies that such property is only exempt from taxation when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in section 196.012(6), Florida Statutes. This paragraph excludes from the exemption property leased for use as a multipurpose hazardous waste treatment facility. Paragraph (b) deals with undeveloped lands and use of property for residential or commercial rentals and provides that the leasehold or other interest shall be taxed only as intangible personal property if the rental payments are due in consideration of such leasehold or other interest. Paragraph (c) includes in the exemption any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Subsection (4) of section 196.199, F.S., provides that all property owned by a governmental entity which is leased to a nongovernmental lessee, except that described in paragraph (2)(a), is subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Subsection (10) provides:

> "Notwithstanding any other provision of law to the contrary, property held by a port authority and any leasehold interest in such property are exempt from ad valorem taxation to the same extent that county property is immune from taxation, provided such

> property is located in a county described in s. 9, Art. VIII of the State Constitution (1885), as restated in s. 6(e), Art. VIII of the State Constitution (1968)."

Section 196.012(6), F.S., lists the conditions under which the use of governmental property by a lessee is deemed to be serving or performing a governmental, municipal or public purpose or function. Such purpose is demonstrated when the use could properly be performed or served by an appropriate governmental unit, or would otherwise be a valid subject for the allocation of public funds. This section specifically includes use as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration when the real property is used for the administration, operation, business offices and activities related and connected with the conduct of an aircraft full service fixed based operation and provides goods and services to the general aviation public in the promotion of air commerce. Other uses specifically included are a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach, when open to the general public with or without an admission charge.

Port Authorities

Port authorities, or port districts, are units of special purpose government created pursuant to the provisions of any general or special law and which are authorized to own or operate any port facilities. A port authority can also refer to any district or board of county commissioners acting as a port authority pursuant to the provisions of any general or special law.

In general, port authorities are given a broad range of powers in the operation of their respective facilities. Increasingly, however, such authorities are coming into conflict with other governmental entities in the area of leases. Such authorities are leasing land or facilities to private entities engaged in nongovernmental activities. While there is little debate that the private lessees are subject to taxation on their leasehold interest, counties have started assessing a tax on the special district itself.

Canaveral Port Authority v. Department of Revenue (Fla. 1996)

The leading case on the ability of a county to assess ad valorem taxes on a special district because of property owned by the district and leased to a private entity engaged in a nongovernmental activity is *Canaveral Port Authority v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996). In Canaveral, the Court, in a 4-3 decision, held that the property was not exempt from ad valorem taxation because the property was being leased to a nongovernmental entity and being used for a nongovernmental purpose.

As alluded to above, the Court rejected the Legislature's power to designate special districts as a "political subdivision" of the state, thereby making them exempt from ad valorem taxation. The Sarasota-Manatee Airport Authority had been so designated and the Second District Court of Appeal had held that this designation made it immune from ad valorem taxation.

The Court also addressed the statutory exemption from ad valorem taxation. The port authority argued that section 315.11, F.S. (1991), provided an exemption from various state and local taxes, an exemption which was not dependent on the use of the property. The Court rejects this argument:

> "Although the legislature did not expressly repeal the exemption provided by section 315.11, we find that by passing chapter 71-133, it imposed a limitation on that

exemption. In view of the express language used in sections 196.001, 196.199(2), and 196.199(4), particularly the term "authorities," we conclude that the legislature intended to provide only a limited exemption for fee interests in port authority property. Together, sections 196.001, 196.199(2), and 196.199(4) require ad valorem taxation of fee interests in property owned by an authority and subject to a lease by a nongovernmental lessee unless the lessee is serving a governmental, municipal, or public purpose or function as defined in section 196.012(6) or uses the property exclusively for a literary, scientific, religious, or charitable purpose."

Constitution Revision Commission

The Constitutional Revision Commission placed the following language on the 1998 general election ballot as part of Revision #10 that proposed the following amendment to Article VII, Section 3, of the Florida Constitution:

(a) All property owned by a municipality and used ~~exclusively by it~~ for governmental or municipal ~~or public~~ purposes shall be exempt from taxation. All property owned by a municipality not otherwise exempt from taxation or by a special district and used for airport, seaport, or public purposes, as defined by general law, and uses that are incidental thereto, may be exempted from taxation as provided by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

Revision #10 was the only one proposed by the Commission that was not approved by the voters.

Constitutional Provision for Amending the Constitution

Article XI, Section 1, of the Florida Constitution, provides the Legislature the authority to propose amendments to the Constitution by joint resolution voted on by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with Secretary of State's office or may be placed at a special election held for that purpose.

C. EFFECT OF PROPOSED CHANGES:

HJR 1899, 1st Eng., is a House Joint Resolution proposed to amend Article VII, Section 3, of the Florida Constitution. The Resolution provides that property that is not otherwise exempt from taxation and that is owned by a municipality or special district and used for seaport purposes may be exempted from taxation, as provided by general law. The resolution amends Article VII, Section 3 as follows:

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. Property that is not otherwise exempt from taxation and that is owned by a municipality or special district and used for seaport purposes may be exempted from taxation, as provided by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary,

scientific, religious or charitable purposes may be exempted by general law from taxation.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The constitutional amendment will be effective on January 1, 2001, following the approval of the amendment by the voters of Florida.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, Section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately $47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HJR 1899, 1st Eng., proposes an amendment to the Florida Constitution to be submitted to the electors of Florida for approval or rejection. While the joint resolution has no fiscal impact on local government revenues, passage of the amendment and subsequent implementing legislation would have a fiscal impact on local government revenues.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This joint resolution does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This joint resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This joint resolution does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Floor Amendments

On May 2, 2000, HJR 1899 was read a third time, one amendment was adopted, and the joint resolution was passed. The adopted amendment deleted airports from the joint resolution.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by: Staff Director:

Thomas L. Hamby Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FINANCE & TAXATION:

Prepared by: Staff Director:

Kama D.S. Monroe Alan Johansen

AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Eliza Hawkins	Eliza Hawkins

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
Thomas L. Hamby	Joan Highsmith-Smith