

**STORAGE NAME:** h0755.lgva.doc

**DATE:** March 8, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
LOCAL GOVERNMENT & VETERANS AFFAIRS  
ANALYSIS**

**BILL #:** HB 755

**RELATING TO:** Tax Exemption/Family Wellness Center

**SPONSOR(S):** Representative Flanagan

**TIED BILL(S):** None.

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (2) FISCAL POLICY & RESOURCES (FRC)
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

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I. SUMMARY:

This bill exempts from ad valorem taxation real and personal property owned and used solely as a nonprofit family wellness center based on its "charitable use" if the property is owned and operated as provided by the bill. Current Florida law does not explicitly exempt nonprofit family wellness centers from ad valorem taxation; however, property owned by an exempt entity and used exclusively or predominately for an exempt purpose is exempt from ad valorem taxation, pursuant to general law. In addition to other requirements, not in current law, the bill requires that the property be owned and operated by a nonprofit corporation that is a charitable institution as defined by current statute -- an exempt entity.

The Impact Conference has not reviewed this bill. The bill appears to clarify and perhaps limit an exemption from ad valorem taxation currently allowed by county property appraisers.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

As discussed in the "Effects of Proposed Changes" and "Fiscal Comments," this bill appears to clarify and perhaps limit an exemption from ad valorem taxation currently allowed by county property appraisers

B. PRESENT SITUATION:

**Ad Valorem Taxation/Background**

Article VII, Section 1, of the Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes levied upon real estate and tangible personal property, except as provided by general law. Article VII, Section 9 of the Florida Constitution provides that counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes, and limits these taxes to 10 mills for all county purposes, 10 mills for all municipal purposes, and 10 mills for all school purposes. Additional millage may be levied for the payment of bonds and taxes levied for a period not longer than two years when authorized by vote of the electors.

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; . . ."

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.

### **Educational, Literary, Scientific, or Charitable Purposes Exemption**

Section 3(a), Art. VII of the State Constitution allows the Legislature to exempt from property taxation ". . . such portions of property as are used predominantly for educational, literary, scientific or charitable purposes."

Chapter 196, F.S., enumerates various exemptions from real and personal property and leasehold interests in property taxation. Property must be owned by an exempt entity and used for an exempt purpose. Section 196.192(1), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used exclusively for exempt purposes. Section 196.192(2), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used predominately for exempt purposes to the extent of the ratio that such predominant use bears to the nonexempt use. Predominant use of property is defined as "use of property for exempt purposes in excess of 50 percent" but less than exclusive, which is 100 percent (s. 196.012(2) and (3), F.S.). The courts have clarified that unless the entire property is used at least predominantly for an exempt use, no portion of it qualifies for an exemption. *North Shore Medical Center, Inc. v. Bystron* 461 So.2d 167 (Fla. 3rd DCA 1984) After the property meets the predominant use test, the exemption is available only to those portions of property used for exempt purposes, including charitable purposes.

"Charitable purpose" is defined in s. 196.012(7), F.S., as

"... a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal."

Section 196.195, F.S., provides for applicants requesting exemption as nonprofits to supply fiscal and other records showing in reasonable detail the financial condition, record of operation, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year as requested by the property appraiser or the value adjustment board. The section also provides criteria for determining profit or nonprofit status of applicants for exemptions, including:

- The reasonableness of any advances or payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;
- The reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly controlled by such person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;
- The reasonableness of any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant, or other similar financial interest in the affairs of the applicant;

- The reasonableness of payments made for salaries for the operation of the applicant or for services, supplies and materials used by the applicant, reserves for repair, replacement, and depreciation of the property of the applicant, payment of mortgages, liens, and encumbrances upon the property of the applicant, or other purposes; and
- The reasonableness of charges made by the applicant for any services rendered by it in relation to the value of those services, and, if such charges exceed the value of the services rendered, whether the excess is used to pay maintenance and operational expenses in furthering its exempt purpose or to provide services to persons unable to pay for the services.

An Applicant must affirmatively show that no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose. No application for exemption may be granted for religious, literary, scientific, or charitable use of property until the applicant has been found by the property appraiser or, upon appeal, by the value adjustment board to be nonprofit as defined in this section.

Section 196.196, F.S., provides criteria for determining whether property is entitled to charitable, religious, scientific, or literary exemption. Criteria include:

- The nature and extent of the charitable, religious, scientific, or literary activity of the applicant, a comparison of such activities with all other activities of the organization, and the utilization of the property for charitable, religious, scientific, or literary activities as compared with other uses.
- The extent to which the property has been made available to groups who perform exempt purposes at a charge that is equal to or less than the cost of providing the facilities for their use. Such rental or service shall be considered as part of the exempt purposes of the applicant.

Only portions of property used predominantly for charitable, religious, scientific, or literary purposes may be exempt. An incidental use of property does not qualify such property for an exemption or impair the exemption of an otherwise exempt property. Property claimed as exempt for literary, scientific, religious, or charitable purposes which is used for profitmaking purposes is subject to ad valorem taxation. Use of property for functions not requiring a business or occupational license conducted by the organization at its primary residence, the revenue of which is used wholly for exempt purposes, shall not be considered profit making.

### **Family Wellness Centers**

Current Florida law does not explicitly exempt nonprofit family wellness centers from ad valorem taxation; however, property owned by an exempt entity and used exclusively or predominately for an exempt purpose is exempt from ad valorem taxation, pursuant to general law. According to representatives of county property appraisers, property owned and operated pursuant to the provisions of this bill -- YMCAs -- currently is treated as exempt from ad valorem taxation.

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill exempts from ad valorem taxation real and personal property owned and used solely as a nonprofit family wellness center based on its "charitable use" if the property is owned and operated as provided by the bill. In addition to other requirements, not in current law, the bill requires that the property be owned and operated by a nonprofit corporation that is a charitable institution as defined by current statute -- an exempt entity.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Section 196.1987, F.S., is created to exempt from ad valorem taxation real and personal property owned and used solely as a nonprofit family wellness center based on its charitable use if the property is owned and operated as provided in the newly created section.

Subsection (2) defines a "family wellness center" to mean real and personal property used to provide physical exercise opportunities for children and adults.

Subsection (3) specifies that to qualify for an exemption under this section:

- The property must be owned and operated by a nonprofit corporation that is a charitable institution as defined by ss. 196.195 and 196.196, F.S., which has as its sole purpose the provision of programs promoting spiritual, mental, and physical health on a holistic basis without emphasizing one over another.
- The property must be used to provide at least five of the eight following programs dedicated to the improvement of conditions in the community and the support of families:
  - Child care programs for preschool children.
  - Before-school or after-school programs for school-aged children.
  - Team sports opportunities for youth and teens.
  - Leadership development for youth, teens, and adults.
  - Services for at-risk youth and teens.
  - Outreach and exercise programs for seniors.
  - Aquatic programs for all ages and skill levels.
  - Services for disabled children and adults.
- The family wellness center must provide all programs and services to those of all ages, incomes, and abilities under a fee structure that reasonably accommodates persons of limited means and therefore ensures that ability to pay is not a consideration.
- To qualify for exemption under this section, the nonprofit corporation must be exempt from federal income tax as an exempt charitable organization under the provisions of s. 501(c)(3) of the Internal Revenue Code, as amended.

**Section 2.** An effective date of January 1, 2002, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See the "Fiscal Comments" section of the analysis.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments" section.

D. FISCAL COMMENTS:

The Impact Conference has not reviewed this bill. The bill appears to clarify and perhaps limit an exemption from ad valorem taxation currently allowed by county property appraisers.

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 expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Article VII, section 18(b), of the Florida Constitution provides:

"Except upon approval of each house of the Legislature by two-thirds of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

However, laws of insignificant fiscal impact (\$1.6 million) are exempt from this provision.

HB 755 appears to clarify an existing exemption from ad valorem taxation currently allowed by county property appraisers. As a result, it does not appear to 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 bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Because exemptions from taxation may result in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994). The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Archer v. Marchall*, 355 So.2d 781 (Fla. 1978). In the event the Legislature provides an exemption without constitutional authority, the exemption may be voided as a violation of the just value requirement of Article VII, section 4, Florida Constitution.

As discussed in the "Present Situation," current Florida law does not explicitly exempt nonprofit family wellness centers from ad valorem taxation; however, property owned by an exempt entity and used exclusively or predominately for an exempt purpose is exempt from ad valorem taxation, pursuant to general law. According to representatives of county property appraisers, property owned and operated pursuant to the provisions of this bill -- YMCAs -- currently is treated as exempt from ad valorem taxation.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Subsection (3) of s. 196.1987, F.S., which is created by this bill, provides in part that to qualify for an exemption under this part: "The property must be owned and operated by a nonprofit corporation that is a charitable institution as defined by ss. 196.195 and 196.196". As noted in the "Present Situation" section, s. 196.195, F.S., provides criteria for determining profit or nonprofit status of applicants for exemptions. However, s. 196.196, F.S., does not address the profit or nonprofit status of applicants. Rather, s. 196.196, F.S., provides criteria for determining whether property is entitled to charitable, religious, scientific, or literary exemption.

Section (1) of s. 196.1987, F.S., which is created by this bill, provides in part:

"Real and personal property owned and used solely as a nonprofit family wellness center shall be exempt from ad valorem taxation based on its charitable use . . ."

It is unclear if the intent is to supplement current statutory provisions defining "charitable purpose" (s. 196.012(7), F.S.) and used to determine whether all or a portion of property is being used predominately for a charitable purpose (s. 196.196, F.S.), or if the intent is to substitute the bill's requirements for these current statutory provisions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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