# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 443 Property Tax Exemptions
**SPONSOR(S):** Barreiro
**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 1344

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Local Government Council | | Camechis | Hamby |
| 2) Judiciary Committee | | | |
| 3) Finance & Tax Committee | | | |
| 4) Fiscal Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS

If adopted by the voters, the amendment to the Florida Constitution proposed by this joint resolution will authorize the Legislature to enact, by general law, tax exemptions for any property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary purposes. The effect of the proposed amendment on the tax status of county, municipal, or special district property may be summarized as follows:

Counties: Currently, county property is immune from ad valorem taxation. If property owned by a county is leased to a private entity, the property is immune from ad valorem taxation regardless of the purpose for which the property is used. If the proposed amendment is viewed by the courts as an express waiver of county immunity, all county property may be subject to taxation unless exempt by general law. If the amendment is not viewed as a waiver, county property will remain immune from taxation.

Municipalities: The proposed amendment does not appear to effect the current mandatory constitutional tax exemption for municipal property owned and used exclusively by a municipality for an essential public purpose. The proposed amendment authorizes the Legislature to enact a general law exemption for municipal property used for non-essential public purposes. However, municipal property that is leased to a private entity and used for a governmental purpose may be subject to taxation unless the Legislature enacts a general law exempting the property (today, a general law exemption is unnecessary). Municipal property leased to a private entity for proprietary or for-profit purposes will remain taxable unless the Legislature enacts a general law exempting the property from taxation.

Special Districts: The Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property. The effect of the proposed amendment on special district property used exclusively by the special district for public purposes is unclear. Special district property that is leased to a private entity and used for a governmental purpose may be subject to taxation unless the Legislature enacts a general law exempting the property (today, a general law exemption is unnecessary). Special district property leased to a private entity for proprietary purposes would remain taxable unless the Legislature enacts a general law exempting the property.

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment must then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

The Revenue Estimating Conference has not yet provided an official estimate of the fiscal impact of the constitutional amendment proposed by the joint resolution; however, adoption of the amendment may result in an indeterminate but significant negative fiscal impact on ad valorem tax revenues of entities that levy ad valorem taxes, including counties, cities, special districts, and school boards. Any negative impact on municipal and special district revenues may be offset, however, by a reduction in the amount of taxes paid by those entities.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The proposed amendment to the State Constitution authorizes the Legislature to provide tax exemptions for municipal or special district property used for certain purposes. Adoption of the proposed amendment by the electorate may increase involvement by government in private sector enterprises.

Ensure Lower Taxes: If the amendment proposed by this joint resolution is adopted, the adoption may result in a reduction of the amount of ad valorem taxes paid by municipalities and special districts on property used for certain purposes depending upon whether the Legislature, by general law, provides tax exemptions for such properties. The impact of the proposed amendment on the tax status of county and special district property is unclear as further discussed below.

B. EFFECT OF PROPOSED CHANGES:

**BACKGROUND**

Taxation Generally

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.[1] 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.[2] 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.

The Florida Constitution contains the overarching provision that "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation" and sets forth the mandatory and permissive exemptions from this constitutional admonition regarding ad valorem taxation.[3]

The present Constitution further provides that where any public project financed by revenue bonds "is occupied or operated by any private corporation . . . pursuant to . . . lease . . . the property interest created by such . . . lease shall be subject to taxation to the same extent as other privately owned property."[4] Paralleling this constitutional provision, s. 196.001, F.S., makes "(a)ll leasehold interests in property . . . of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state" subject to taxation unless expressly exempted.

The Florida statutes require taxation, unless expressly exempt, of all real and personal property in this state, 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.[5] Property is taxed either as real property, tangible personal property, or intangible personal property.[6] Real and tangible personal property is taxed by local

[1] Art. VII, Sec.1, Fla. Const.
[2] Art. VII, Sec. 9, Fla. Const.
[3] Art. VII, Sec. 4 and Art. VII, Sec. 3(a), Fla. Const
[4] Art. VII, Sec. 10(c), Fla. Const.
[5] § 196.001(2), F.S.
[6] Section 192.001, F.S., defines these terms as follows: **"Real property"** means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably; **"Tangible personal property"** means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

governments, while intangible personal property is taxed by the state. Intangible tax revenues are deposited into the state's General Revenue Fund with the exception of intangible tax revenues collected on governmental leaseholds that are allocated to the school board of the county in which taxed leasehold property is located.

Governmental entities may lease public property to private entities. Leasehold interests in property owned by a governmental entity and leased to a private entity may not be subject to any tax, may be subject to the intangibles tax levied by the state, or may be subject to ad valorem taxes levied by local governmental entities; however, the determination of whether a leasehold interest is taxable requires a fact-specific analysis of each particular lease situation. The tax treatment of leasehold interests, and the separate underlying fee interest in the governmentally-owned real property, depends upon whether the property is used by the private entity in the performance of a governmental function, the terms of lease agreements (rental payments and length of lease term), the status of the governmental owner as either immune or exempt from taxation, and whether the project was financed using proceeds from government revenue bonds.

To the extent that any government property is exempt or immune from taxation, the tax base for all taxing authorities, including school districts, cities, counties, and special districts, is reduced. Because of its importance in local government finance, reductions in the ad valorem tax base can be significant.

Immunity or Exemption from Taxation

Generally, all property is subject to ad valorem taxation unless immune or exempt. "Immunity and exemption differ in that immunity connotes an absence of the power to tax while exemption presupposes the existence of that power, but the power is foreclosed by a constitutional or statutory provision."[7] According to the Florida Supreme Court, the Florida Constitution does not empower the Legislature to grant immunity from taxation to a governmental entity.[8]

The state and its political subdivisions have an "inherent sovereign immunity" from taxation, which "is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government."[9] 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; what comprises "the state" is thus limited to counties, entities providing a public system of education, and agencies, departments, or branches of state government that perform administration of the state government.[10] If an entity is 'immune' from taxation, any waiver of immunity must be expressly stated in either the Constitution or a statute.[11]

According to the Florida Supreme Court, the Florida Constitution does not empower the Legislature to grant an exemption from taxation where the exemption has no constitutional basis,[12] and each exemption is strictly construed against the party claiming the exemption.[13] In addition, the Legislature is not authorized to tax an entity, such as a municipality, if the constitution exempts the entity from

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"Construction work in progress" consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition; **"Intangible personal property"** means money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

[7] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1234 n. 7 (Fla.1996); *See* Orange State Oil Co. v. Amos, 130 So. 707 (Fla. 1930);

[8] Canaveral Port Authority v. Dep't of Revenue, 690 So.2d 1226 (Fla. 1996); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).

[9] State ex rel. Charlotte County v. Alford, 107 So.2d 27, 29 (Fla.1958); Dickinson v. City of Tallahassee, 325 So.2d 1, 3 (Fla.1975).

[10] Canaveral Port Authority v. Department of Revenue, 690 So. 2d 1226 (Fla. 1996), reh'g denied, (Mar. 27, 1997).

[11] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975).

[12] Canaveral Port Authority v. Dep't of Revenue, 690 So.2d 1226 (Fla. 1996); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).

[13] Sebring Airport Authority v. McIntyre, 642 So.2d 1072 (Fla. 1994).

taxation.[14] Generally speaking, property owned by municipalities or special districts may be exempt (but not immune) from ad valorem taxation depending upon the use of the property.

Typically, all property used by private persons in commercial enterprises is subject to taxation, either directly or indirectly through taxation of the leasehold.[15] However, the tax treatment of public property that is leased to a private entity depends upon whether the governmental owner of the property is immune, as opposed to exempt, from taxation. The tax treatment of property that is owned by an exempt entity, such as a city, and leased to private parties has been the subject of much litigation through the years and several legislative attempts to clarify the extent to which these properties are taxable.

## CURRENT SITUATION

### Current Tax Treatment of County Property

Although the Florida Constitution does not expressly grant counties immunity from taxation, the Florida courts have long held that counties are subdivisions of the state and immune from taxation.[16] If an entity is 'immune' from taxation, any waiver of immunity must be expressly stated in either the Constitution or a statute.[17] The current tax treatment of county property may be summarized as follows:

a. Property owned and directly used by a county

Regardless of the manner in which a county uses county-owned property, or the purpose for which the county uses the property, the property is not subject to taxation because each county is immune from taxation as a subdivision of the state.[18]

b. Property owned by a county and leased to a private entity

Regardless of the manner in which a private entity uses leased county-owned property, the property is not taxable because each county is immune from taxation as a subdivision of the state. County-owned property remains immune from ad valorem taxation even if leased to a private party for non-governmental purposes.[19]

### Current Tax Treatment of Municipal Property

Unlike state, county, and school districts, cities are not subdivisions of the state or immune from taxation. Rather, the Florida Constitution provides a self-executing mandatory exemption from taxation for "[a]ll property owned by a municipality and used exclusively by it for municipal or public purposes."[20] However, if the city chooses to lease city-owned property and permits the property to be used by a private entity, the mandatory ad valorem tax exemption ceases.[21] At that point, "[i]t is the utilization of leased property … that determines whether [the property] is taxable under the Constitution."[22]

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[14] Dep't of Revenue v. City of Gainesville, 859 So.2d 595 (Fla. 1st DCA 2003).
[15] Williams v. Jones, 326 So.2d 425 (Fla. 1975).
[16] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975); Alford v. State, 107 So.2d 27 (Fla. 1958); Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958); Orlando Utilities Comm'n. v. Milligan, 229 So.2d 262 (Fla. 4th DCA 1969), cert. denied 237 So.2d 539 (Fla. 1970).
[17] Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975); Manatee County v. Town of Longboat Key, 365 So.2d 143 (Fla. 1978); Markham v. Broward County, 825 So.2d 472, 473 (Fla. 4th DCA 2002).
[18] Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958); Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1228 (Fla.1996).
[19] Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957); Markham v. Broward County, 825 So.2d 472,473 (Fla. 4th DCA 2002).
[20] Art. VII, Sec. 3(a), Fla. Const.
[21] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998).
[22] Page, 714 So.2d at 1074, citing Straughn v. Camp, 293 So.2d 689, 695 (Fla.1974).

In addition, city property "used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation".[23] If city-owned property is leased to a private entity, the property may still be exempt from taxation if the property is used predominantly for literary, scientific, religious, or charitable purposes as provided by general law.[24]

The Florida courts have long held that the State Constitution does not permit the Legislature to exempt from taxation any class of real or personal property unless there is a constitutional basis for the exemption.[25] Conversely, the Legislature is not authorized to tax property owned by a governmental entity, such as a city, if the constitution exempts the entity from taxation. The current tax treatment of municipal property may be summarized as follows:

a. Property owned and exclusively used by a municipality for municipal or public purposes

Property owned and used by a municipality is exempt from taxation under the mandatory exemption provided by the Florida Constitution as long as the property is used exclusively by the municipality for a municipal or public purpose that "encompass[es] activities that are essential to the health, morals, safety, and general welfare of the people within the municipality". The governmental-governmental and governmental-proprietary tests for private interests in municipal property do not apply to property both owned and used exclusively by a municipality for a municipal or public purpose.[26]

b. Property owned by a municipality and leased to a private entity that performs a governmental-governmental function

Property owned by a municipality and leased to a private entity that uses the property in the performance of a governmental-governmental function is exempt from taxation only if the use by the private entity "could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."[27] A governmental function has been defined as one having to do with the administration of some phase of government, that is, exercising or dispensing some element of sovereignty, and a proprietary function has been defined as a function designed to promote the comfort, convenience, safety and happiness of the citizens.[28]

c. Property owned by a municipality and leased to a private entity for governmental-proprietary activities, including activities that generate profits benefiting the private entity or its shareholders

Property owned by a municipality and leased to a private entity for use in the course of governmental-proprietary functions is not exempt from ad valorem taxation. A governmental-proprietary function occurs when a nongovernmental lessee uses governmental property for proprietary and for-profit aims. Proprietary functions "promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government.[29]

The Florida Supreme Court has rejected the proposition that "a governmental lease to a [for profit] nongovernmental lessee [and so the underlying realty] is exempt from ad valorem taxation if the lessee [merely] serves a public purpose."[30] The court reasoned that, to avoid giving one private enterprise an

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[23] Art. VII, Sec. 3(a), Fla. Const.
[24] § 196.199(2)(c), F.S.
[25] Palethorpe v Thomson, 171 So.2d 526 (Fla. 1965); Sebring Airport Authority v. McIntyre, 783 So.2d 238 (Fla. 2001).
[26] Dep't of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005).
[27] Dep't of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005); Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001); Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So.2d 498 (Fla. 1976).
[28] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998); *See* McPhee v. Dade County, 362 So.2d 74 (Fla. 3d DCA 1978).
[29] Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001).
[30] Page v. City of Fernandina Beach, 714 So.2d 1070 (Fla. 1st DCA 1998), review denied 728 So.2d 201 (Fla. 1998); citing McIntyre, 642 So.2d at 1073.

advantage over another by virtue of its landlord's identity, the constitution strictly limits exemption from ad valorem taxation. Property leased to profit-making nongovernmental entities is exempt only when such entities use the property to carry out some sovereign function on the municipality's behalf (thereby presumably reducing the municipality's cost of providing governmental-governmental services).[31]

**Current Tax Treatment of Special District Property**

The Florida Supreme Court has concluded that, even if designated as such by the Legislature, certain special districts are not subdivisions of the state and immune from taxation.[32] Since special districts are not necessarily immune from taxation, special district property may be subject to ad valorem taxation unless otherwise exempt. The Florida Constitution does not contain an explicit ad valorem tax exemption for property owned by special districts; however, s. 189.403(1), F.S., defines "special district" as:

> a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. *For the purpose of s. 196.199(1), special districts shall be treated as municipalities.* [Emphasis added.][33]

While a special district is not a "municipality", the Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property.[34] In 1996, the Florida Supreme Court reviewed the tax status of property owned by an independent special district and leased to private entities engaged in nongovernmental activities.[35] Although the court did not explicitly address the tax status of all special district property, the court treated the special district property before it as if it were municipal property. In his dissenting opinion, Justice Overton stated that under the majority's opinion, counties and school districts are immune from taxation, municipalities are constitutionally exempt, and special districts fall into a third category judicially created by the court with no basis in the Florida Constitution.[36]

Based upon the courts' treatment of special district property as well as s. 189.403(1), F.S., the analysis provided above regarding taxation of municipal property appears to apply to special districts as well.

## EFFECT OF PROPOSED CHANGES

The joint resolution proposes 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 municipal or public purposes shall be exempt from taxation. Any property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary 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

[31] Page, 714 So.2d at 1074.
[32] Port of Palm Beach v. Dep't of Revenue, 684 So.2d 188 (Fla. 1996); Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1228 (Fla.1996). However, water control districts may be considered "political subdivisions" of the state and is thus immune from tax liability. Andrews v. Pal-Mar Water Control Dist. Dept. of Revenue, 388 So. 2d 4 (Fla. Dist. Ct. App. 4th Dist. 1980), rev. denied, 392 So. 2d 1371 (Fla. 1980) rev. denied, 392 So. 2d 1373 (Fla. 1980).
[33] Section 196.199(1), F.S., provides a tax exemption for governmental property, including municipal property, and sets forth conditions under which the exemption applies.
[34] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226 (Fla.1996); Sun 'N Lake of Sebring Imp. Dist. v. McIntyre, 800 So.2d 715 (Fla. 2nd DCA 2001), review denied 821 So.2d 298 (Fla. 2002) and 821 So.2d 302 (Fla. 2002).
[35] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226 (Fla.1996).
[36] Canaveral Port Authority v. Department of Revenue, 690 So.2d 1226, 1232 (Fla.1996).

portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

The proposed amendment does not alter the current constitutional exemption for property used predominately for educational, literary, scientific, religious, or charitable purposes as authorized by general law.

**Effect on Taxation of County Property**

If the amendment proposed by the joint resolution is adopted, its effect on the tax treatment of county property depends upon whether the courts view the amendment as an express waiver of county immunity from taxation.[37]

a. Property owned and directly used by a county

Currently, regardless of the manner in which a county uses county-owned property or the purpose for which the property is used, county-owned property is not subject to taxation since each county is immune from taxation as a subdivision of the state. If the proposed amendment is adopted and the courts determine that the amendment is not an express waiver of county immunity, tax treatment of county property will remain unchanged, i.e., county-owned property will not be subject to taxation.

On the other hand, if the proposed amendment is adopted and is interpreted as a "waiver" of county immunity from taxation, all property owned and used by a county would be subject to taxation unless exempt by general law. In addition, adoption of the proposed amendment will place counties at a disadvantage from a tax perspective because the existing constitutional mandatory tax exemption for property owned and used exclusively by municipalities continues to apply, while counties will be dependent upon legislative enactment of tax exemptions for property owned and used exclusively by county governments.

b. Property owned by a county and leased to a private entity

Currently, regardless of the manner in which a private entity uses property leased from a county, the property is not taxable because each county is immune from taxation as a subdivision of the state. County-owned property remains immune from taxation even when leased to a private party for non-governmental purposes.[38] If the proposed amendment is adopted and the courts determine that the amendment is not an express waiver of county immunity, tax treatment of county property that is leased to private entities will remain unchanged, i.e., county-owned property will not be subject to taxation.

On the other hand, if the proposed amendment is adopted and is interpreted as a "waiver" of county immunity from taxation, property owned by a county and leased to a private entity for governmental-governmental or governmental-proprietary purposes would be subject to taxation unless exempt by general law.

**Effect on Taxation of Municipal Property**

a. Property owned and exclusively used by a municipality

If the amendment proposed by the joint resolution is adopted, property owned and used by a municipality remains exempt from taxation under the current mandatory exemption provided by the Florida Constitution as long as the property is used exclusively by the municipality for a municipal or public purpose that "encompass[es] activities that are essential to the health, morals, safety, and general welfare of the people within the municipality".

[37] If an entity is 'immune' from taxation, any waiver of that immunity must be expressly stated in either the Constitution or a statute. Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975).

[38] Markham v. Broward County, 825 So.2d 472,473 (Fla. 4th DCA 2002); Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1957).

If adopted, the proposed amendment authorizes the Legislature to exempt, by general law, municipal property used for non-essential public purposes.

b. Property owned by a municipality and leased to a private entity that performs a governmental-governmental function

Under current case law, municipal property that is leased to a private entity and used for governmental-governmental purposes appears to be exempt from ad valorem taxation under the mandatory, self-executing constitutional exemption for municipal property. If the amendment proposed by the joint resolution is adopted, such property may be subject to taxation unless the Legislature enacts a tax exemption by general law. Governmental-governmental functions are performed if the function performed by the private entity "could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."[39] A governmental function has been defined as one having to do with the administration of some phase of government, that is, exercising or dispensing some element of sovereignty, and a proprietary function has been defined as a function designed to promote the comfort, convenience, safety and happiness of the citizens.[40]

c. Property owned by a municipality and leased to a private entity for governmental-proprietary activities, including generating profits benefiting the private entity or its shareholders

Under current Florida case law, property owned by a municipality and leased to a private entity for governmental-proprietary activities is subject to ad valorem taxation. If the amendment proposed by the joint resolution is adopted, the Legislature will be authorized to enact, by general law, tax exemptions for property owned by a municipality and leased to a private entity that uses the property in the performance of governmental-proprietary functions. A governmental-proprietary function occurs when a nongovernmental lessee uses governmental property for proprietary and for-profit aims. Proprietary functions “promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government.[41]

**Effect on Taxation of Special District Property**

While a special district is not a “municipality”, the Florida courts have treated special district property as municipal property for purposes of determining ad valorem taxation of district-owned property.

a. Property owned and exclusively used by a special district

Under current Florida case law, it appears that property owned by a special district and used by the special district for an essential public purpose is exempt from taxation. If the amendment proposed by this joint resolution is adopted, its effect on the tax status of property owned and directly used by a special district is unclear. If the amendment is adopted, it may be arguable that the automatic exemption no longer applies and that all special district property is taxable, including property used directly by the special district for public purposes, unless the Legislature enacts tax exemptions in general law. Special district property used directly by the special district for non-essential public purposes will be subject to taxation unless the Legislature exempts such property from taxation by general law.

[39] Dep’t of Revenue v. City of Gainesville, 2005 WL 3310297 (Fla. 2005); Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001); Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So.2d 498 (Fla. 1976).
[40] Sebring Airport Authority v. McIntyre, 718 So.2d 296 (Fla. 2nd. DCA 1998); *See* McPhee v. Dade County, 362 So.2d 74 (Fla. 3d DCA 1978).
[41] Sebring Airport Authority v. McIntyre, 783 So.2d 238, 242 (Fla. 2001).

b. Property owned by a special district and leased to a private entity that performs a governmental-governmental function

Under current Florida case law, it appears that special district property is exempt from taxation if the property is leased to a private entity that uses the property in the performance of a governmental-governmental function. If the amendment proposed by the joint resolution is adopted, property owned by a special district and used by it or leased and operated for governmental-governmental purposes may be subject to taxation unless the Legislature enacts tax exemptions for such property by general law.

c. Property owned by a special district and leased to a private entity for governmental-proprietary activities, including generating profits benefiting the private entity or its shareholders

Under current Florida case law, property owned by a special district and leased to a private entity for governmental-proprietary activities is subject to ad valorem taxation. If the amendment proposed by the joint resolution is adopted, the Legislature will be authorized to enact, by general law, tax exemptions for property owned by a special district and leased to a private entity that uses the property in the performance of governmental-proprietary functions.

C. SECTION DIRECTORY:

Please see Effect of Proposed Changes.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The impact, if any, on state intangible tax revenues is indeterminate.

2. Expenditures: Art. XI, s. 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. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference has not yet provided an official estimate of the fiscal impact of the constitutional amendment proposed by the joint resolution; however, adoption of the amendment may result in an indeterminate but significant negative fiscal impact on ad valorem tax revenues of entities that levy ad valorem taxes, including counties, cities, special districts, and school boards. Any negative impact on municipalities and special district revenues may be offset, however, by a reduction in the amount of taxes paid by those entities.

   Section 196.012(6), F.S., provides that a "[g]overnmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds." If the amendment proposed by the joint resolution is adopted, it is possible that this existing statutory provision, in conjunction with other statutory provisions, may result in an immediate negative fiscal impact on governmental entities that levy ad valorem taxes. In other words, property that may not be currently exempt may become exempt upon the amendment's adoption based upon existing

statutory exemptions, resulting in an immediate fiscal impact on taxing entities without further legislative action.

2. Expenditures: Under the proposed constitutional amendment, the Legislature is authorized to exempt from taxation certain properties owned by municipalities and special districts that are currently subject to taxation. If property that is currently taxed is exempt by general law after adoption of the amendment, tax payments by municipalities and special districts may be reduced.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: If approved by the voters the proposed constitutional amendment may reduce local governments' ad valorem tax base. Private entities leasing public property that is currently taxed will see a reduction in their obligations to pay taxes if their leasing agreements require them to pay ad valorem taxes imposed on the leased property and the Legislature enacts a general law exempting the leased property from taxation. The overall effect may be to shift the tax burden to non-exempt property through increased millage rates.

If approved by the voters, the amendment may provide a competitive advantage to private enterprises that lease tax exempt public property to the detriment of competitors that do not lease tax exempt public property.

D. FISCAL COMMENTS: None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

2. Other: The joint resolution requires placement of the following ballot statement (summary) on the election ballot:

> PROPERTY TAX EXEMPTIONS.--Proposing an amendment to the State Constitution to authorize property owned by a county, municipality, or special district and used by it or leased and operated for governmental-governmental or governmental-proprietary purposes to be exempt from taxation as provided by general law.

The ballot summary of a proposed amendment to the state constitution must accurately describe the amendment; otherwise, voter approval is a nullity.[42] In 2000, the Florida Supreme Court concluded that the accuracy requirement applies to amendments proposed by any authorized method, including amendments proposed by joint resolution of the Legislature. [43]

When a constitutional amendment is submitted to the vote of the people, the substance of the amendment must be printed in clear and unambiguous language on the ballot.[44] The ballot title and summary must advise the electorate of the true meaning and ramifications of the constitutional amendment, and must be fair and accurate[45] so that the voters will not be misled as to its purpose and are able to intelligently cast a ballot.[46] The ballot summary of a proposed state constitutional

[42] Armstrong v. Harris, 773 So. 2d 7, 12 (Fla. 2000), reh'g denied, (Dec. 5, 2000) and cert. denied, 532 U.S. 958, 121 S. Ct. 1487, 149 L. Ed. 2d 374 (2001).
[43] Armstrong, 773 So. 2d at 12; Sancho v. Smith, 830 So. 2d 856 (Fla. 1st DCA 2002), review denied, 828 So. 2d 389 (Fla. 2002).
[44] § 101.161(1), F.S.
[45] Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000), reh'g denied, (Dec. 5, 2000) and cert. denied, 532 U.S. 958, 121 S. Ct. 1487, 149 L. Ed. 2d 374 (2001).
[46] Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998); Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563 (Fla. 1998); Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use may Cover Multiple Subjects, 699 So. 2d 1304 (Fla.

amendment may be defective if it omits material facts necessary to make the summary not misleading.[47] In evaluating a proposed constitutional amendment's chief purpose as stated in the ballot summary, a court must look to objective criteria inherent in the amendment itself, such as the amendment's main effect.

A court may not order the removal of a proposed constitutional amendment from the ballot unless the record shows that the proposal is "clearly and conclusively defective." [48]

B. RULE-MAKING AUTHORITY: This bill does not address rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[49] Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.[50] Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.[51]

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

1997), reh'g denied, (Oct. 6, 1997); Advisory Opinion to the Atty. Gen. re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997).

[47] Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998).

[48] Askew v. Firestone, 421 So.2d 151, 154 (Fla.1982); Armstrong, 773 So.2d at 11.

[49] *See* Art. XI, Sec. 1, Fla. Const.

[50] *See* Art. XI, Sec. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

[51] *See* Art. XI, Sec. 5(c), Fla. Const.