## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7001 PCB GEAC 08-03 Property Tax Exemptions for Educational Institutions
**SPONSOR(S):** Government Efficiency & Accountability Council and Attkisson
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Government Efficiency & Accountability Council | 13 Y, 0 N | Levin/Dykes | Cooper |
| 1) Policy & Budget Council | 32 Y, 0 N | Diez-Arguelles | Hansen |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS

Pursuant to Article VII, section 3(a) of the Florida Constitution, the Legislature is authorized to provide an exemption from the property tax for property used predominantly for educational purposes. The Legislature has done this by enacting ss. 196.192 and 196.198, F.S.

In March 2007 the Attorney General issued an Advisory Legal Opinion AGO 2007 – 20 to the Broward County Property Appraiser, which interpreted these two sections of statute to mean that an educational institution may only receive an ad valorem tax exemption pursuant to s. 196.198, F.S., and that to qualify for such an exemption, the property must be used exclusively for educational purposes.

In reaching this conclusion, the Attorney General rejected the holding in *Walden v. University of South Florida Foundation*, 328 So.2d 460 (Fla. 2DCA 1976), *cert. denied* 336 So. 2d 605. In that case the court directed that a ratio of predominant use to non-exempt use be applied in determining the exemption from taxation of a 30 acre tract owned by the foundation when five of the acres were planted in oranges which produced income for the foundation. The Attorney General premised his rejection of the holding in *Walden* upon the Legislature's 1988 change to s. 196.192, F.S., which added the words, "subject to the provisions of this chapter."

This bill clarifies that the intent of the Legislature in enacting the 1988 change, twelve years after the decision in *Walden*, was not an attempt to alter the result in that case. Property owned by educational institutions and used predominantly for exempt purposes is exempt from ad valorem taxation to the extent of the ratio that the predominant use bears to the non-exempt use.

The Revenue Estimating Conference has estimated that the bill will have a negative indeterminate impact on local government property tax revenues.

The bill takes effect upon enactment.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – the bill clarifies that educational institutions using property predominantly for educational purposes are exempt from paying taxes on the educational use of the property.

B. EFFECT OF PROPOSED CHANGES:

Pursuant to Article VII, section 3(a) of the Florida Constitution, the Legislature is authorized to provide a property tax exemption to property used predominantly for educational purposes. The Legislature has done this by enacting ss. 196.192 and 196.198, F.S. These sections provide, in part:

> **196.192 Exemptions from ad valorem taxation.—**Subject to the provisions of this chapter:
>
> (1) All property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.
>
> (2) All property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use…
>
> **196.198 Educational property exemption.**—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation…..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. If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a sublease of other contractual agreement with that lessee…

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In reaching this conclusion, the Attorney General rejected the holding in *Walden v. University of South Florida Foundation*, 328 So.2d 460 (Fla. 2DCA 1976), *cert. denied* 336 So. 2d 605. In that case the court directed that a ratio of predominant use to non-exempt use be applied in determining the exemption from taxation of a 30 acre tract owned by the foundation when five of the acres were planted in oranges which produced income for the foundation. The Attorney General premised his rejection of the holding in *Walden* upon the Legislature's 1988 change to s. 196.192, which added the words, "subject to the provisions of this chapter."

One rule of statutory construction provides that when the Legislature enacts a material amendment to a statute, the Legislature is presumed to have intended to alter the law unless the contrary is made clear. *Carlile v. Game & Fresh Water Fish Comm'n,* 354 So.2d 362 (Fla.1977). A different rule of statutory construction states that once a court has construed a statutory provision, subsequent reenactment of

that provision may be considered legislative approval of the judicial interpretation. *Seddon v. Harpster,* 403 So.2d 409 (Fla.1981).

The existence of these competing rules of statutory construction may be considered to render the application of ss. 196.192 and 196.198, F.S., to property owned and predominantly used by educational institutions for exempt purposes ambiguous. Although it might be reasonable to conclude that the Legislature intended to eliminate the ad valorem exemption for educational property used predominantly for exempt purposes by its 1988 amendment to s. 196.192, F.S., any such conclusion must be harmonized with the recognition that the Legislature reenacted the predominant use language of s. 196.192 in each year from the decision in *Walden* until 1988. Accordingly, the Legislature must be presumed to have continued its approval of the court's construction of the language in *Walden* to permit the predominant, but not exclusive, use of educational property to be exempt from taxation to the extent of the ratio of predominant use to the non-exempt use.

This conclusion is bolstered by subsequent case law. In *Daniel v. T.M. Murrell Co.,* 445 So.2d 587 (Fla. 2DCA 1984) the Second District Court held that use rather than ownership of the property controlled the granting of the tax exemption. That the Legislature found this holding to be in conflict with its intent that ownership be considered in determining exemption can be inferred from its amendment of s. 196.192, F.S., in 1988 to add the language "subject to the provisions of this chapter."

Moreover, in 1997 the Florida Supreme Court in *Leon County Educational Facilities Authority v. Hartsfield*, 698 So. 2d 526 at 528-529 (Fla. 1997) stated:

> We cannot agree that the 1988 amendment which added the words "owned by an exempt entity" to section 196.192(1) precludes the Authority from obtaining a tax exemption. **The Senate Staff Analysis reflects that this amendment was intended to overrule the effect of such cases as *Daniel v. T.M. Murrell Co.,* 445 So.2d 587 (Fla. 2d DCA 1984)** [emphasis added], which held that use rather than ownership of the property controlled the granting of a tax exemption. *Daniel* was a case like *Mastroianni* in which a private party had leased property to an exempt entity. We do not believe that in enacting the 1988 amendment to section 196.192(1), the legislature intended to preclude an equitable owner who otherwise qualified from receiving a tax exemption.

The amendments to s. 196.192, F.S., made by the bill are intended to make clear that the Legislature has provided for educational property owned by an educational institution and used predominantly for educational purposes to receive an exemption from ad valorem taxation determined by reference to the ratio of the exempt use to the non-exempt use.

The bill is effective upon enactment.

C. SECTION DIRECTORY:

Section 1. Amends s. 196.192, F.S., to specifically include educational institutions as exempt entities eligible for exemption when educational property is owned and used exclusively or predominantly for educational purposes.

Section 2. Effective upon enactment.

## II. 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:

The Revenue Estimating conference has estimated that the bill will have a negative indeterminate impact on local government property tax revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

By clarifying the law in this area, the bill may reduce the authority that cities and counties have to raise revenues. However, the fiscal impact, while indeterminate, is expected to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

## IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.