HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 473 Municipal Property Tax Exemption
SPONSOR(S): Diaz and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	15 Y, 3 N, As CS	Wolfgang	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The joint resolution amends Article VII, s. 3 of the Florida Constitution to authorize the Legislature to create laws exempting property owned by a municipality from taxation.

The Revenue Estimating Conference has not reviewed this language for a fiscal impact. Staff estimates that the provisions of the joint resolution have no revenue impact, absent subsequent legislative action to enact specific exemptions.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.[1] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the state constitution as follows:[2]

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments and are fixed by ordinance or resolution of the taxing authority's governing body.[3]

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.[4]

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.[5] Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.[6]

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.[7] However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.[8]

[1] Article VII, s. 9, Fla. Const.
[2] A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.
[3] Section 200.001(7), F.S.
[4] Section 197.383, F.S.
[5] Section 195.002, F.S.
[6] Chapter 195, F.S.
[7] Article VII, s. 2, Fla. Const.
[8] See, for example, *Moore v. Palm Beach County,* 731 So. 2d 754 (Fla. Dist. Ct. App. 4th Dist. 1999) citing *W. J. Howey Co. v. Williams,* 142 Fla. 415, 195 So. 181, 182 (1940).

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.[9] The Florida Constitution grants property tax relief in the form of certain valuation differentials,[10] assessment limitations,[11] and exemptions,[12] including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

Exemptions under Article VII, s. 3 of the Florida Constitution

Prior to the 1968 revision, the 1885 Florida Constitution contained the following provisions relating to exemptions from ad valorem taxes for municipal, educational, literary, scientific, religious or charitable purposes:

> The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.[13]
>
> The property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the Legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.[14]

These provisions were not self-executing. They required legislation to affect them, and the courts generally deferred to the legislative interpretation of a "municipal purpose."[15]

The 1968 Constitution substantially revised the exemption for municipalities. Article VII, s. 3 of the Florida Constitution now reads:

> 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.

Municipal or Public Purpose Exemption

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[9] "Exemption" presupposes the existence of a power to tax, while "immunity" implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

[10] Article VII, s. 4, Fla. Const., authorizes valuation differentials, which are based on character or use of property.

[11] Article VII, s. 4(c), Fla. Const., authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

[12] Article VII, s. 3, Fla. Const., provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[13] Article IX, s. 1 of the Florida Constitution of 1885.

[14] Article XVI, 16 of the Florida Constitution of 1885.

[15] See *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005) (citing *State ex rel. Harper v. McDavid*, 200 So. 100 (1941)).

The revision does not require legislative enactment for an exemption for property *owned* by a municipality and *used exclusively by it* for municipal or public purposes. The definition of public purpose varies based on context,[16] but, generally in the ad valorem context, "a municipal or public purpose" means a purpose that is essential to the health, morals, safety, and general welfare of the people within the municipality.[17]

> The requirement that the property be both owned and used exclusively by the municipality was seen as a response to the 1965 decision in *Daytona Beach Racing & Recreational Facilities District v. Paul,* 179 So.2d 349, 353 (Fla.1965), holding that municipal property leased to a corporation for a racetrack served a public purpose because it contributed to the economic well-being of the community, rendering the lessees' interest in the property exempt from ad valorem taxation."[18]

The fundamental-fairness question at issue was whether for-profit activity on municipal property should enjoy a tax-exemption benefit that the same for-profit activity would not receive on a parcel not owned by the municipality. After the change in the constitutional language, the courts have taken a more restrictive interpretation of municipal exemptions from ad valorem taxation when the municipal property is leased to a private entity. The test used by the courts is whether government property leased to a private entity is used for a governmental-proprietary purpose or a governmental-governmental purpose. "A governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for proprietary and for-profit aims."[19] Unless the private entity is serving a governmental-governmental purpose, it will be not be exempt.[20] Even property that is both owned and used by the municipality may not be exempt if it is viewed by the courts as being used purely for a commercial purpose.[21]

The Florida Statutes also give guidance on the exemption for municipal and public purposes,[22] but, because the constitutional provision is self-executing, the courts will generally not uphold a legislative exemption that fails the governmental-governmental test. The Florida Supreme Court has stated:

> The term "municipal or public purposes" is not defined in article VII, section 3(a). Although "governmental, municipal, or public purpose or function" is statutorily defined in section 196.012(6), Florida Statutes (2004), which also concerns tax exemptions for governmentally owned property, "[a] reading of section 3(a) of article VII clearly establishes that it is a self-executing provision and therefore does not require statutory implementation." *City of Sarasota v. Mikos,* 374 So.2d 458, 460 (Fla.1979). Therefore, the statutory definition does not control the construction of the term "municipal or public purposes" in the constitutional provision. In addition, the statutory definition in section 196.012(6) applies only to property leased from governmental entities.[23]

Pursuant to s. 196.012(6), F.S., when government property is leased, it is deemed a "municipal or public" purpose if:

- It is leased by a type of government entity carrying out a function appropriate for the government or for the use of government funds.

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[16] Case law that determines what an appropriate public purpose is for purposes of bond validation is not included here. Note, however, that a public purpose may mean different things in the bond validation setting than for purposes of ad valorem exemptions. See Martin M. Randall, *The Different Faces of "Public Purpose": Shouldn't It Always Mean the Same Thing?*, 30 FLA. ST. U. L. REV. 529, 542+ (2003) (reviewing the differences in the meaning of "public purpose" for bonds, tax exemptions, and eminent domain); see also *Sebring Airport Authority v. McIntyre,* 783 So.2d 238, 241 (Fla.2001) ("[O]ne cannot adopt and apply the phrase or concept of 'public purpose' from decisions concerning issues other than ad valorem taxation exemptions in this ad valorem taxation context").

[17] See *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 264 (Fla. 2005) *compare id*. at 267-68 (dissenting) (disagreeing about whether the purpose must be "essential" to the health, morals, safety, and general welfare of the people); *Islamorada v. Higgs*, 882 So. 2d 1009 (Fla. 3d DCA 2004).

[18] See *Gainesville*, 918 So. 2d at 260.

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

[20] See *Sebring Airport Authority v. McIntyre,* 783 So.2d 238 (Fla.2001); *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975).

[21] See *Gainesville*, 918 So. 2d at 260.

[22] See s. s. 196.012(6), F.S. and s. 196.199, F.S.

[23] *Gainesville*, 918 So. 2d at 256-57.

- It is an activity undertaken in an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for administrative services connected with an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce.
- It is activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as a public airport, a spaceport, or a deepwater port that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation.
- It is used as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach when access to the property is open to the general public with or without a charge for admission.[24]
- If it is certain property federally deeded and designated to be maintained for public historic preservation, park, or recreational purposes.
- If it is property owned by the Federal Government or Space Florida and used for defense and space exploration purposes.

The provision specifies that property used for a telecommunications service is not a municipal or public purpose, unless the telecommunications service is provided by a public hospital.

Case Law:
The following is a brief summary of some of the relevant case law on what constitutes a municipal or public purpose subsequent to the 1968 constitutional revision:

Florida Dep't of Revenue v. Gainesville[25]
The Supreme Court held that statutes imposing ad valorem taxes on property owned by a city and used exclusively by the city to provide telecommunications services to the public were not facially unconstitutional. The court held that when municipal telecommunications services promote any of the statutorily created goals[26] for the benefit of the municipal population, property used to provide those services are exempt under the constitution. However, if a municipality were to use "infrastructure advantages gained from its pre-existing utility operations [to] enter a market in which a high level of service and competition already exists without introducing new levels of service, fostering innovation, or encouraging infrastructure investment,"[27] it would not serve a "municipal or public purposes" and the city-owned telecommunications property would not be exempt. Therefore, because there were instances where the city-owned telecommunications services may be subject to tax, the statutory provision survived a facial challenge.

Sebring Airport Authority v. McIntyre[28]
The Supreme Court of Florida reviewed a case where airport property owned by a city was leased to a raceway. The court determined that the raceway was being operated for proprietary, for-profit purposes. The court held that the portion of s. 196.012, F.S. that created an ad valorem tax exemption for situations where private enterprise leases governmental property to be utilized for profit-making endeavors such as "convention and visitor centers, sports facilities, concert halls, arenas and stadium, parks or beaches" was unconstitutional.

Sarasota v. Mikos[29]
The Supreme Court determined that vacant land held by municipality is presumed to be in use for a public purpose if it is not actually in use for a private purpose on tax assessment day. Therefore, the court determined that the vacant land in question was exempt from taxation under the constitution. Because the court determined that the constitutional exemption was self-executing, it did not rely on statutory provisions for the meaning of the term "use."

[24] This provision was deemed unconstitutional in *Sebring Airport Authority v. McIntyre,* 783 So.2d 238 (Fla.2001).
[25] 918 So. 2d 250 (Fla. 2005).
[26] The goals were to provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. Section 364.01, F.S. (2005).
[27] 918 So. 2d 250, 267-68 (Fla. 2005).
[28] 783 So.2d 238 (Fla.2001).
[29] 374 So.2d 458 (Fla 1979).

Williams v. Jones[30]
The Supreme Court, in one of its first strong opinions on this issue following the constitutional revision, made the following statement with respect to municipal property leased to a commercial interest:

> The operation of the commercial establishments represented by appellants' cases is purely proprietary and for profit. They are not governmental functions. If such a commercial establishment operated for profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Island Beach be exempt? No rational basis exists for such a distinction. The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, relate to 'governmental-governmental' functions as opposed to 'governmental-proprietary' functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either Directly or Indirectly through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates.

Walden v. Hillsborough County Aviation Authority[31]
The Supreme Court of Florida determined that leases of space at an airport, from a county aviation authority, were being used for such commercial, profit-making purposes as sale of food and beverages and other merchandise. Based on the fact that these leases had a "governmental-proprietary" function the court determined the leases were taxable and upheld the property appraiser's assessment of the leaseholds.

Islamorada v. Higgs[32]
The Third District Court of Appeals found that a marina, which served both residents and nonresidents, was entitled to an ad valorem tax exemption. The marina competed with other marinas in the area and generated a profit for the municipality which was deposited into the municipality's general fund. Nevertheless, the court found that it was "abundantly clear" that the marina existed and was operated for the comfort, convenience, safety, and happiness of the citizens of the village. Therefore, the marina served a valid governmental purpose and was exempt under the Florida Constitution.

Greater Orlando Aviation Authority v. Crotty[33]
The Fifth District Court of appeals determined that a hotel located on airport property was being operated for profit rather than to provide public benefits for citizens of city, and thus was subject to ad valorem taxation. The court analyzed the meaning of municipal purpose by reviewing prior case law. It made no reference to the statutory meaning in s. 196.012, F.S.

City of Gainesville v. Crapo[34]
The First District Court of Appeal determined that a city's nine communication towers were subject to ad valorem taxation. The city leased space on towers to private providers, who then sold telecommunications services to customers for profit. The court determined that the leased portions of the towers were used for governmental-proprietary functions, and although city also used the towers for governmental communications that served municipal or public purpose, the fact that private providers leased and used space on towers in conducting private business contradicted the requirement of the Florida Constitution that property be used exclusively by municipality for municipal or public purposes. Additionally, property purchased by the city to serve as a buffer between its generating plant and residential development in surrounding area was subject to ad valorem taxation. The city purchased 100 percent of fee simple interest in property to a provide buffer between the plant and the surrounding residential development and for potential future retrofitting and/or expansion of the plant. However, a private timber company, which retained rights to timber on the property, was conducting for-profit

[30] 326 So. 2d 425 (Fla. 1975).
[31] 375 So. 2d 283 (Fla. 1979).
[32] 882 So. 2d 1009 (Fla. 3d DCA 2003).
[33] 775 So. 2d 978 (Fla. 5th DCA 2001).
[34] 953 So. 2d 557 (Fla. 1st DCA 2007).

timber operation on relevant tax assessment days, and thus, the property was not exempt from taxation under provision of state constitution governing municipal tax exemptions.

Capfa Capital Corp. 2000A v. Donnegan[35]
The Fifth District Court of Appeal held that a university student housing complex that was operated by a non-profit corporation created and administered by municipality was not used for a "municipal or public purpose" within meaning of state constitution and thus was not constitutionally exempt from taxation. The service provided by the student housing complex was not necessary or essential to the health, safety, and morals of the people as required by constitution, but rather was a service offered in competition with private providers. Furthermore, the court noted that the housing was also not within the range of services historically provided by municipalities, and was operated with the intent of making a profit.

Proposed Changes

The joint resolution amends Article VII, s. 3 of the Florida Constitution to authorize the Legislature to create laws exempting property owned by a municipality from taxation.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

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 not reviewed this language for a fiscal impact. Staff estimates that the provisions of the joint resolution have no revenue impact, absent subsequent legislative action to enact specific exemptions.

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:

[35] 929 So. 2d 569 (Fla. 5th DCA 2006).

None.

2. Other:

Legislative Proposed Amendments

Article XI, s. 1 of the Florida Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved 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 the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2014, the Finance & Tax Subcommittee adopted an amendment to this bill. The amendment removed the deletion of the exemption for property used for educational, literary, scientific, religious, or charitable purposes.

This analysis reflects the above changes.