

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 587 Charitable Exemption from Ad Valorem Taxation

SPONSOR(S): Finance & Tax Subcommittee, Metz and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	17 Y, 1 N, As CS	Wolfgang	Langston
2) Local & Federal Affairs Committee	16 Y, 0 N	Miller	Rojas
3) Appropriations Committee	23 Y, 1 N	Hawkins	Leznoff

SUMMARY ANALYSIS

The committee substitute creates s. 196.1955, F.S., allowing property owned by an exempt organization to receive an exemption from ad valorem taxes for educational, literary, scientific, religious or charitable purposes if the institution has taken "affirmative steps" to prepare the property for a charitable purpose. If the property is not in actual use for an exempt purpose within 5 years, the property owner must pay back taxes owed plus 15 percent interest. A tax lien will be placed on the property for purposes of collecting these taxes unless the property owner is continuing to take affirmative steps, in which case the property owner may continue to receive the exemption.

The bill has an effective date of July 1, 2014.

The Revenue Estimating Conference determined that the committee substitute will have a negative, annual impact on local government revenues of -\$1.2 million beginning in fiscal year 2015-2016.

This bill may be county or municipality mandates requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or the amount a “purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.”¹ Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property’s just valuation.²

Article VII, s. 4 of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted by the Legislature; currently the Legislature completely exempts inventory.³ The Florida Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

Article VII, s. 3 of the Florida Constitution permits a number of tax exemptions. In addition to exemptions for municipal purposes, Article VII, s. 3 provides that such portions of property used predominately for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation. The Legislature has fully implemented these constitutional exemptions. Sections 196.195 and 196.196, F.S., set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose. Specific provisions exist for property for hospitals, nursing homes, and homes for special services;⁵ property used for religious purposes;⁶ educational institutions⁷ and charter schools;⁸ labor organization property;⁹ nonprofit community centers;¹⁰ biblical history displays;¹¹ and affordable housing.¹²

Property Entitled to Charitable, Religious, Scientific, or Literary Exemptions

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.¹³ Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt entity is used exclusively for exempt purposes, it shall be totally exempt from ad valorem taxation.

¹ See *Walter v. Shuler*, 176 So. 2d 81, 86 (Fla. 1965) (quoting *Root v. Wood*, 21 So.2d 133 (Fla. 1945)); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

² See s. 193.011(1)-(8), F.S.

³ Section 196.185, F.S.

⁴ See FLA. CONST. art. VII, s. 4(d) & (g)

⁵ Section 196.197, F.S.

⁶ Sections 196.1975(3) and 196.196(3), F.S.

⁷ Section 196.198, F.S.

⁸ Section 196.1983, F.S.

⁹ Section 196.1985, F.S.

¹⁰ Section 196.1986, F.S.

¹¹ Section 196.1987, F.S.

¹² Section 196.196(5), F.S.

¹³ Section 196.196(1)(a)-(b), F.S.

Property used for a house of worship, affordable housing, or educational purposes may be exempt if the entity has taken affirmative steps to prepare the property for specified exempt uses. The term "affirmative steps" is defined by statute to mean:

- environmental or land use permitting activities,
- creation of architectural or schematic drawings,
- land clearing or site preparation,
- construction or renovation activities, or
- other similar activities that demonstrate a commitment to a religious use.¹⁴

If affordable housing is granted a charitable exemption while performing these affirmative steps, but transfers the property for purposes other than affordable housing, or if the property is not actually used as affordable housing within 5 years after the exemption is granted, then the property is subject to back taxes, 15 percent interest, and a penalty of 50 percent of the taxes owed.¹⁵ The 5-year limitation may be extended if the holder of the exemption continues to take affirmative steps to develop the property for affordable housing.¹⁶

Charitable organizations are not entitled to exemptions while affirmative steps are being taken. In *Smith v. American Lung Ass'n of Gulfcoast Florida, Inc.*, the Second District Court of Appeals held that a charitable organization was not entitled to an exemption while it was constructing its headquarters even though it would be entitled to an exemption once the headquarters was completely built.¹⁷

Charitable Organizations

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Section 196.012(7), F.S., defines a charitable purpose as a function or service which is of such a community service that its discountenance could legally result in the allocation of public funds for the continuance of the function or the service.

Determining Profit vs. Non-Profit Status of an Entity

Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture. When applying for an exemption under this section, an applicant is required to provide the property appraiser with "such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year."¹⁸

The applicant must 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."¹⁹

Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria outlined in subsection (2) of s. 196.195, F.S., to determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.²⁰

¹⁴ Sections 196.196(3),(5) and 196.198, F.S.

¹⁵ Section 196.196(5), F.S.

¹⁶ Section 196.196(5), F.S.

¹⁷ 870 So. 2d 241 (Fla. 2d DCA 2004).

¹⁸ Section 196.195(1), F.S.

¹⁹ Section 196.195(3), F.S.

²⁰ Section 196.195(2)(a)-(e), F.S.

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, determines the applicant to be nonprofit under s. 196.195, F.S.²¹

Proposed Changes

The bill creates s. 196.1955, F.S., allowing property owned by an exempt organization to receive an ad valorem exemption for educational, literary, scientific, religious or charitable purposes if the property owner has taken “affirmative steps” to prepare the property for an exempt purpose. The bill consolidates the existing provisions allowing affordable housing, religious houses of worship, and educational property to receive the exemption while affirmative steps are being taken into one provision that would allow all educational, literary, scientific, religious or charitable property to use this exemption. If the property is not in actual use for an exempt purpose within 5 years, the property owner must pay back taxes owed plus 15 percent interest. A tax lien will be placed on the property for purposes of collecting these taxes unless the property owner is continuing to take affirmative steps, in which case the property owner may continue to receive the exemption.

The bill defines “affirmative steps,” consistent with existing law, to be:

- environmental or land use permitting activities,
- creation of architectural or schematic drawings,
- land clearing or site preparation,
- construction or renovation activities, or
- other similar activities.

The bill clarifies that if an exemption is improperly granted as a result of a mistake by the property appraiser, the property owner does not owe interest.

The bill also makes technical and conforming changes to ss. 196.196 & 196.198, F.S.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Creates s. 196.1955, F.S., allowing property to be exempt from ad valorem taxation for educational, literary, scientific, religious or charitable purposes while the property owner is taking affirmative steps to put the property in use for such purpose. Provides for remedies if the property is not put to such use within 5 years.

Section 2: Conforms and makes technical corrections to s. 196.196, F.S., by deleting language made unnecessary by the creation of s. 196.1955, F.S., and renumbering certain subsections.

Section 3: Conforms and makes technical corrections to s. 196.198, F.S., by deleting language made unnecessary by the creation of s. 196.1955, F.S., and creating certain subsections and paragraphs.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²¹ Section 196.195(4), F.S.
STORAGE NAME: h0587e.APC
DATE: 4/21/2014

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. The Revenue Estimating Conference determined that the committee substitute will have a negative, annual impact on local government revenues of -\$1.2 million beginning in fiscal year 2015-2016.

3. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Exempt organizations will receive an ad valorem exemption while they are taking affirmative steps toward a charitable purpose. They will receive a tax benefit because they will not have to wait until the property is in actual use for educational, literary, scientific, religious or charitable purposes before receiving the exemption.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature. This provision may apply because the committee substitute is expected to reduce local government revenues. However, the committee substitute may qualify for an exemption under art. VII, s. 18(d), Fla. Const., as an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES