

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 626

INTRODUCER: Senator Hays

SUBJECT: Charitable Exemption from Ad Valorem Taxation

DATE: March 3, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | White | Yeatman | CA | Favorable |
| 2. | | | AFT | |
| 3. | | | AP | |

I. Summary:

SB 626 expands the ad valorem tax exemption for charitable purpose to include when the exempt organization owning the property takes affirmative steps to prepare the property for a charitable purpose.

II. Present Situation:

Property Tax Assessments

Article VII, section 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 what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹ Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.²

Article VII, section 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.³ The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

¹ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *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)

Article VII, sections 3 and 6 of the Florida Constitution permits a number of tax exemptions.

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.⁵ 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.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. 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.⁶

In 2009, the Legislature amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken "affirmative steps" to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.⁷ The 2009 amendment also provided penalties for properties granted a charitable exemption under this subsection that are transferred 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.

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.

⁵ Section 196.196(1)(a)-(b), F.S.

⁶ Section 196.196(3), F.S.

⁷ Chapter 2009-96, Laws of Fla. (2009 SB 360).

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.”⁸

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.”⁹

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.¹⁰

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, has determined the applicant to be nonprofit under s. 196.195, F.S.¹¹

After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the property’s taxable value. The taxable value multiplied by the millage rate equals the property’s yearly tax bill.

III. Effect of Proposed Changes:

Section 1 amends s. 196.196, F.S., to extend the ad valorem tax exemption for charitable purposes to properties that are owned by exempt organizations that have taken affirmative steps to prepare the property for a charitable purpose, as defined in s. 196.012, F.S.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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.¹² By reducing the tax base upon which counties and municipalities may raise ad valorem revenue, this bill will reduce a local government’s revenue-raising authority.

⁸ Section 196.195(1), F.S.

⁹ Section 196.195(3), F.S.

¹⁰ Section 196.195(2)(a)-(e), F.S.

¹¹ Section 196.195(4), F.S.

¹² FLA. CONST. art. VII, s. 18(b).

Article VII, section 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact.¹³ An insignificant fiscal impact means an amount not greater than ten cents times the average statewide population for the applicable fiscal year.¹⁴ A fiscal estimate is not available for this bill. If it is determined that this bill has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Non-profit organizations that own real property and take affirmative steps to prepare that property for a charitable purpose will be exempt from ad valorem taxation.

B. Private Sector Impact:

Non-profit organizations that own real property and take affirmative steps to prepare that property for a charitable purpose will be exempt from ad valorem taxation.

C. Government Sector Impact:

This bill may have an impact on local government revenue as a result of extending the ad valorem tax exemption for charitable purposes to properties that are owned by exempt organizations that have taken affirmative steps to prepare the property for a charitable purpose. The Revenue Estimating Conference has not determined the fiscal impact of this bill.

The Department of Revenue may need to review and update Form DR-504, Ad Valorem Tax Exemption Application and Return, as a result of this bill.

VI. Technical Deficiencies:

None.

¹³ FLA. CONST. art. VII, s. 18(d).

¹⁴ As of April 1, 2013, the total state population is estimated to be 19,259,543. University of Florida, Bureau of Economic and Business Research, *Florida Estimates of Population 2013* (Apr. 1, 2013), at 21.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.196 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
