

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 839 Property Prepared for Tax-Exempt Use

**SPONSOR(S):** Burton

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 924

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	17 Y, 0 N, As CS	Dugan	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

### SUMMARY ANALYSIS

Current law permits ad valorem tax exemption to certain organizations for property used predominately for non-profit educational, literary, scientific, religious or charitable purposes, subject to criteria established by statute. Additionally, property used for a house of worship, affordable housing, or educational purposes may be exempt prior to actual exempt use if the organization has taken affirmative steps to prepare the property for the specified exempt use.

The bill expands the “affirmative steps” ad valorem exemption to property owned by an exempt organization and used for literary, scientific, or charitable purposes. Similar to current law, the exempt organization must take “affirmative steps” to prepare the property for the specified exempt purpose. Except for property being prepared for use as a house of public worship, if the property is not in actual use for an exempt purpose within five years, the property owner must pay back taxes owed plus 15 percent interest. Further, a tax lien may be placed on such property for purposes of collecting these taxes unless the property owner demonstrates he or she 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, 2015 and will first affect property taxes levied for the 2016-2017 fiscal year.

The Revenue Estimating Conference determined that the bill will have a negative annual impact on local government revenues of \$1 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

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>1</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>2</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.<sup>3</sup> Such exemptions include, but are not limited to exemptions for such portions of property used predominately for educational, literary, scientific, religious or charitable purposes.<sup>4</sup> The Legislature has fully implemented these constitutional exemptions and set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose.<sup>5</sup> Specific provisions exist for property for hospitals, nursing homes, and homes for special services;<sup>6</sup> property used for religious purposes;<sup>7</sup> educational institutions<sup>8</sup> and charter schools;<sup>9</sup> labor organization property;<sup>10</sup> nonprofit community centers;<sup>11</sup> biblical history displays;<sup>12</sup> and affordable housing.<sup>13</sup>

#### 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, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other qualifying entities.<sup>14</sup> Only the portions of the property used predominantly for qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt organization is used exclusively for exempt purposes, it shall be totally exempt from ad valorem taxation.

Property used for a house of worship, affordable housing, or educational purposes may be exempt if the organization has taken affirmative steps to prepare the property for the specified exempt use. 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 the exempt use.<sup>15</sup>

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 five years after the exemption is granted, then the property is subject to

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<sup>1</sup> Fla. Const., art. VII, s. 4.

<sup>2</sup> Fla. Const. art. VII, ss. 3, 4, and 6.

<sup>3</sup> s. 196.031, F.S.

<sup>4</sup> Fla. Const., art. VII, s. 3.

<sup>5</sup> ss. 196.195 and 196.196, F.S.

<sup>6</sup> s. 196.197, F.S.

<sup>7</sup> ss. 196.1975(3) and 196.196(3), F.S.

<sup>8</sup> s. 196.198, F.S.

<sup>9</sup> s. 196.1983, F.S.

<sup>10</sup> s. 196.1985, F.S.

<sup>11</sup> s. 196.1986, F.S.

<sup>12</sup> s. 196.1987, F.S.

<sup>13</sup> s. 196.196(5), F.S.

<sup>14</sup> s. 196.196(1)(a)-(b), F.S.

<sup>15</sup> ss. 196.196(3),(5) and 196.198, F.S.

back taxes, 15 percent interest, and a penalty of 50 percent of the taxes owed.<sup>16</sup> The five year limitation may be extended if the holder of the exemption continues to take affirmative steps to develop the property for affordable housing.<sup>17</sup>

In 2004, a Florida court held that charitable organizations in Florida are not entitled to exemptions while affirmative steps are being taken.<sup>18</sup> 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.<sup>19</sup>

### Charitable Organizations

Under federal law, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes.<sup>20</sup> 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.

Florida law defines a charitable purpose as a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or the service.<sup>21</sup>

### Determining Profit vs. Non-Profit Status of an Entity

Current law 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.<sup>22</sup> When applying for an exemption, 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."<sup>23</sup>

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."<sup>24</sup>

Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria to determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.<sup>25</sup>

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.<sup>26</sup>

### Proposed Changes

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<sup>16</sup> s. 196.196(5), F.S.

<sup>17</sup> s. 196.196(5), F.S.

<sup>18</sup> *Smith v. American Lung Ass'n of Gulfcoast Florida, Inc.*, 870 So. 2d 241 (Fla. 2d DCA 2004).

<sup>19</sup> *Id.*

<sup>20</sup> 26 U.S.C. § 501(c)(3).

<sup>21</sup> s. 196.012(7), F.S.

<sup>22</sup> s. 196.195, F.S.,

<sup>23</sup> s. 196.195(1), F.S.

<sup>24</sup> s. 196.195(3), F.S.

<sup>25</sup> s. 196.195(2)(a)-(e), F.S.

<sup>26</sup> s. 196.195(4), F.S.

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. Except for property being prepared for use as a house of public worship, if the property is not in actual use for an exempt purpose within five years, the property owner must pay back taxes owed plus 15 percent interest. Further, a tax lien may be placed on such 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 that demonstrate a commitment to prepare the property for an exempt use.

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 and 196.198, F.S.

The bill has an effective date of July 1, 2015.

#### 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 five 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.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference determined that the bill will have a negative annual impact on local government revenues of \$1 million beginning in Fiscal Year 2015-2016.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Exempt organizations will receive an ad valorem exemption while they are taking affirmative steps toward its exempt purpose. Such organization will receive a tax benefit because it 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 bill is expected to reduce local government revenues. However, the bill 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

On March 31, 2015, the Finance & Tax Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- clarified that providing affordable housing is considered a charitable use;
- changed the property appraiser's role in filing a tax lien from mandatory to permissive; and
- made a drafting change to a cross reference.

The analysis is written to the bill as amended.