

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 Finance and Tax

BILL: CS/CS/SB 924

INTRODUCER: Finance and Tax Committee; Community Affairs Committee and Senator Hays

SUBJECT: Property Prepared for a Tax-exempt Use

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 924 expands the ad valorem tax exemption for an exempt organization that is taking “affirmative steps” to prepare property to be used for an exempt purpose. Current law grants this treatment to educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing. The bill expands the exemption to all property being prepared for an educational, literary, scientific, religious or charitable purpose.

The Revenue Estimating Conference has determined that the bill reduces local government revenues by \$1 million in Fiscal Year 2015-2016, with a recurring negative impact of \$1 million.

The bill is effective July 1, 2015.

II. Present Situation:

Property Tax Assessments

All property must be assessed at just value for ad valorem tax purposes.¹ 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.²

¹ FLA. CONST. art. VII, s. 4.

² 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).

The Florida Constitution authorizes the Legislature to provide an exemption for property predominantly used for educational, literary, scientific, religious or charitable purposes by general law.³

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

Property used predominantly for educational, literary, scientific, religious, or charitable purposes is exempt.⁴ In determining whether the property is predominantly used for an exempt purpose, 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 charitable or other qualifying entities.⁵ Only the portions of the property used predominantly for an exempt purpose may be exempt from ad valorem taxation.

Affirmative Steps

Property is also exempt when the owner has taken affirmative steps to prepare for exempt use. This treatment is authorized for property owned by an educational institution that is being prepared for educational use,⁶ property owned by an exempt organization that is being prepared as a house of public worship,⁷ and property owned by a 501(c)(3) organization that is being prepared to provide affordable housing to extremely-low, very-low, low, and moderate income persons or families.⁸ These properties are exempt from tax while they are being prepared for exempt use if the owner has taken “affirmative steps” to prepare the property for exempt use. As such, this treatment is commonly referred to as “affirmative steps” treatment.

The term "affirmative steps" is defined 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 an exempt use.⁹

The affirmative steps treatment for affordable housing requires that the property appraiser assess the property owner if the property is transferred for a purpose other than affordable housing or otherwise is not in actual use to provide affordable housing within five years after first being granted affirmative steps treatment.¹⁰ The property appraiser may grant an extension if the property owner can demonstrate that the owner is still taking affirmative steps.¹¹ Otherwise, the property appraiser is required to assess the unpaid taxes, plus 15 percent interest and a penalty

³ FLA. CONST. art. VII, s. 3(a).

⁴ Sections 196.196(2) and 196.198, F.S. *See also* s. 196.1978, F.S. (providing that certain property used to provide affordable housing is property used for a charitable purpose).

⁵ Section 196.196(1)(a)-(b), F.S.

⁶ Section 196.198, F.S.

⁷ Section 196.196(3), F.S. “Public worship” is defined to mean religious worship services and incidental activities such as educational activities, parking, recreation, partaking of meals, and fellowship.

⁸ Section 196.196(5)(a), F.S.

⁹ Sections 196.196(3),(5)(a), and 196.198, F.S.

¹⁰ Section 196.196(5)(b), F.S.

¹¹ Section 196.196(5)(b)4, F.S.

equal to 50 percent of the taxes owed. The taxpayer has 30 days to pay the taxes, penalties and interest, after which the property appraiser must file a lien against any property owned by the organization.¹²

III. Effect of Proposed Changes:

Section 1 creates s. 196.1955, F.S., to consolidate the current affirmative steps provisions into a single statute and extends the affirmative steps treatment to all property owned by an exempt organization and being prepared for an exempt educational, literary, scientific, religious, or charitable use. The bill retains the current definition of “affirmative steps” and all organizations that qualify for affirmative steps treatment under current law (educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing) continue to qualify for such treatment under the bill.

The bill provides that if property granted affirmative steps treatment is transferred for a nonexempt purpose or is not in actual use for an exempt purpose within five years, the property appraiser shall assess back taxes plus 15 percent interest. A tax lien will be placed on property to collect these taxes if the property owner does not pay the assessment within 30 days. The tax lien provision does not apply to property that an exempt organization is preparing for use as a house of public worship.

Sections 2 and 3 delete the current affirmative steps provisions in ss. 196.196 and 196.198, F.S.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution states that “[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that the municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

Article VII, section 18(d) of the Florida Constitution provides an exemption from the mandates provision for laws having an insignificant fiscal impact. Therefore, the bill may be exempt.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Section 196.196(5)(b), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that will reduce local property taxes by \$1 million annually, beginning in Fiscal Year 2015-2016.

B. Private Sector Impact:

Exempt organizations that own real property and take affirmative steps to prepare that property for an exempt purpose will receive an exemption from ad valorem taxation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 196.196 and 196.198.

This bill creates section 196.1955 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Finance and Tax on April 7, 2015:

The CS/CS requires the property appraiser to file a tax lien when property is not used for

an exempt purpose or is transferred within five years of being granted affirmative steps treatment, rather than leaving the lien up to the property appraiser's discretion.

CS by Community Affairs on March 10, 2015:

Changes a word to make it permissive for a property appraiser to serve a tax lien against a property that is not in an exempt use within five years, instead of mandatory.

B. Amendments:

None.