

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: CS/SB 1236

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Educational Property Tax Exemption

DATE: January 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1236 expands the current ad valorem exemption for property used for educational purposes to exempt land that is not owned by the educational institution, but used for educational purposes by the educational institution under a lease, but only if the educational institution is responsible for the taxes owed and ongoing maintenance and operational expenses of the land and buildings under the lease, and if the property has been used for educational purposes and has been receiving the exemption for at least 10 years.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise (FLA. CONST. art VII, s. 4). Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965);

within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Educational Property Tax Exemption

All property in the state is subject to taxation unless it is expressly exempted.¹¹ Section 196.012, F.S., provides a number of relevant definitions related to exemptions:

- "Exempt use of property" or "use of property for exempt purposes" means predominant or exclusive use of property owned by an exempt entity for educational, literary, scientific, religious, charitable, or governmental purposes.¹²
- "Exclusive use of property" means use of property solely for exempt purposes.¹³
- "Use" means the exercise of any right or power over real or personal property incident to the ownership of the property.¹⁴

Property used for educational purposes is generally exempt from property tax in Florida.¹⁵ Generally, in order to be exempt, the property has to be both owned by an educational institution and used for educational purposes by the educational institution or another exempt entity.¹⁶

The exemption also covers several additional educational situations:

Deltona Corp. v. Bailey, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ See FLA. CONST. art. VII, ss. 3 and 4, and s. 196.001, F.S.

¹² Section 196.012(1), F.S.

¹³ Section 196.012(2), F.S. Such purposes may include more than one class of exempt use.

¹⁴ Section 196.012(4), F.S.

¹⁵ Section 196.198, F.S.

¹⁶ *Id.*

- Certain workshops that provide rehabilitation and retraining of disabled persons;
- Certain portions of property used by college fraternities and sororities;
- The use of property by certain public fairs and expositions;
- Situations where the property used for educational purposes and the educational institution are owned by the same persons; and
- Property owned by a non-profit entity but used for educational purposes by a 501(c)(3) educational institution that uses the property under a ground lease or other contractual arrangement to provide education for students prekindergarten through grade 8.¹⁷

Nonprofit Entity Status within Other Property Tax Exemptions

Chapter 196, F.S., features a number of property tax exemptions, which specify certain nonprofit ownership or usage criterion to govern a property's qualification for an exemption. These include:

- Section 196.196, F.S. (Determining whether property is entitled to charitable, religious, scientific, or literary).
- Section 196.197, F.S. (Additional provisions for exempting property used by hospitals, nursing homes, and homes for special services).
- Section 196.1975, F.S. (Exemption for property used by nonprofit homes for the aged).
- Section 196.1978, F.S. (Affordable housing property exemption).

Leaseholds and Leasebacks¹⁸

Generally, a leasehold represents interests in real property held under a rental agreement in which the owner gives the lessee the right to occupy or use the land for a period of time; or signifies the asset representing the right of the lessee to use the leased property. A leaseback is a transaction whereby a transferor sells property and later leases back the property. In a sale-leaseback arrangement, for example, an educational institution might sell its property to a new and separate entity and subsequently lease the property from the new and separate entity.

III. Effect of Proposed Changes:

Section 1 amends s. 196.198, F.S., to provide that land, buildings, and other improvements to real property used exclusively for educational purposes shall also be exempt from ad valorem taxes if, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land and buildings under the lease and if the real property has been used for educational purposes and has been receiving the exemption under this section for at least 10 years. For such leasehold properties, the educational institution shall receive the full benefit from the exemption. The owner of the property shall disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring the educational institution receives the benefit.

Section 2 provides an effective date of July 1, 2020.

¹⁷ *Id.*

¹⁸ See BLACK'S LAW DICTIONARY (6th ed. 1990).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

Educational institutions that meet the bill's new exemption qualifying parameters will likely pay less property tax.

C. Government Sector Impact:

The Department of Revenue would need to amend Form DR-504 and Rule 12D-16.002, F.A.C.¹⁹

VI. Technical Deficiencies:

The provisions in the CS specify that the exemption applies under certain circumstances which include that the real property has been receiving the exemption for at least 10 years. The sponsor may want to clarify characteristics of the 10 years (e.g., cumulative, consecutive, or immediately preceding).

¹⁹ Florida Department of Revenue, *SB 1236 Agency Bill Analysis* (Jan. 15, 2020) (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.198 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 by Community Affairs on January 27, 2020:

Specifies that the exemption applies if, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land and buildings under the lease and if the real property has been used for educational purposes and has been receiving the exemption under this section of law for at least 10 years.

- B. **Amendments:**

None.