

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 919 Property Tax Exemptions Used by Hospitals

**SPONSOR(S):** Ways & Means Committee, Caruso

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	12 Y, 1 N	Calamas	Calamas
2) Ways & Means Committee	17 Y, 0 N, As CS	Curry	Langston
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Current law permits an ad valorem tax exemption for certain property used predominately for non-profit educational, literary, scientific, religious or charitable purposes, subject to criteria established by statute.

Generally, applicants for a religious, literary, scientific, or charitable exemption must be nonprofit entities. Hospitals, nursing homes, and homes for special services must also be a Florida non-profit corporation that is an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code.

The bill creates an additional requirement for hospitals to meet in order to qualify for a charitable tax exemption. The bill requires hospitals to document the value of charitable services they provide, and limits the charity tax exemption to the value of that charity care.

The bill has no fiscal impact on state government. The Revenue Estimating Conference has estimated that the bill would have a positive, indeterminate revenue impact on local governments.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Florida Charitable Property Tax Exemption

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>1</sup> and provides for specified assessment limitations, property classifications and exemptions.<sup>2</sup> After the local 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 implemented these constitutional exemptions and set forth the criteria to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose.<sup>5</sup> Specific provisions apply to property for hospitals, nursing homes, and homes for special services;<sup>6</sup> that 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>

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.

##### 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>15</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 government burdens. 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>16</sup>

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

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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> 26 U.S.C. § 501(c)(3).

<sup>16</sup> s. 196.012(7), F.S.

Current law outlines the criteria a local property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture for the purposes of receiving an exemption.<sup>17</sup> An applicant must 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>18</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>19</sup>

Based on the information provided by the applicant, the property appraiser must determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.<sup>20</sup> In doing so, the property appraiser must consider the reasonableness of various payments, loan guarantees, contractual arrangements, management functions, capital expenditures, procurements, charges for services rendered, and other financial dealings.

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>21</sup>

### Additional Criteria for Hospitals, Nursing Homes, and Homes for Special Services

In addition to the above criteria, hospitals<sup>22</sup>, nursing homes<sup>23</sup> and homes for special services<sup>24</sup> must be Florida non-profit corporations that are exempt organizations under the provisions of s. 501(c)(3) of the Internal Revenue Code.<sup>25</sup>

In determining the extent of the exemption to be granted to hospitals, nursing homes, and homes for special services, portions of the property leased as parking lots or garages operated by private enterprise are not exempt from taxation.<sup>26</sup> Property or facilities which are leased to a nonprofit corporation which provides direct medical services to patients in a nonprofit or public hospital and qualify under s. 196.196, F.S., are exempt from taxation.<sup>27</sup>

In FY 2019-20, the exemption for non-profit hospitals resulted in an estimated \$57 million in tax savings to the affected entities.<sup>28</sup>

### Federal Charity Care Reporting Requirements

To qualify for federal tax exemption, hospitals must report their community benefit activities to the Internal Revenue Service by filing IRS Form 990 and a supplemental Schedule H form. Community benefit activities include the net, unreimbursed costs of charity care (providing free or discounted services to patients who qualify under the hospital's financial assistance policy); participation in means-tested government programs, such as Medicaid; health professions education; health services research; subsidized health services; community health improvement activities; and cash or in-kind

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<sup>17</sup> s. 196.195, F.S.,

<sup>18</sup> s. 196.195(1), F.S.

<sup>19</sup> s. 196.195(3), F.S.

<sup>20</sup> s. 196.195(2)(a)-(e), F.S.

<sup>21</sup> s. 196.195(4), F.S.

<sup>22</sup> s. 196.012(8), F.S., “Hospital” means an institution which possesses a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested

<sup>23</sup> s. 196.012(8), F.S., “Nursing home” or “home for special services” means an institution that possesses a valid license under chapter 400 or part I of chapter 429 on January 1 of the year for which exemption from ad valorem taxation is requested.

<sup>24</sup> Id; s. 400.801, F.S. “Home for special services” means a site licensed by AHCA prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

<sup>25</sup> s. 196.197, F.S.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Estimates provided Department of Revenue staff as background information for the Revenue Estimating Conference, February 7, 2020.

contributions to other community groups.<sup>29</sup> Net community benefit activities do not include revenue from uncompensated care pools or programs, such as Low Income Pool (LIP) or Disproportionate Share Hospital (DSH) funds.<sup>30</sup>

### LIP and DSH Funding

The LIP program<sup>31</sup> provides government funding to safety net providers, including hospitals, for the costs of uncompensated charity care for low-income individuals who are uninsured. Uncompensated care (UC) includes charity care for the uninsured but does not include UC for insured individuals, bad debt, or Medicaid and the Children's Health Insurance Program (CHIP) shortfall. The low-income pool consists of a capped annual allotment of \$1 billion total computable for each year of the 5 year demonstration period.<sup>32</sup> Local governments, such as counties, hospital taxing districts and other state agencies provide funding for the non-federal share of the \$1 billion LIP distributions.<sup>33</sup> In Fiscal Year 2019-2020, non-profit Florida hospitals received \$291,401,277 in LIP funding.

Hospitals that serve a significantly disproportionate number of low-income patients may receive DSH payments from the Centers for Medicare and Medicaid Services (CMS)<sup>34</sup> to cover the costs of providing care to uninsured patients.<sup>35</sup> Under federal law, state Medicaid programs are required to make DSH payments to qualifying hospitals that serve a large number of Medicaid and uninsured individuals.<sup>36</sup> Each year, the Florida Legislature delineates how the DSH funds will be distributed to each eligible facility through either statutory formulas or other direction in the implementing bill or proviso. For Fiscal Year 2019-2020, non-profit Florida hospitals received \$72,891,031 in DSH funds.

### Charitable Property Tax Exemptions for Hospitals in Other States

#### Utah

Utah requires a non-profit hospital to provide gifts to the community that exceed its' tax liability in order to receive a property tax exemption.<sup>37</sup> Community gifts may include indigent care, community education and service, unreimbursed care to patients covered by Medicaid, Medicare or other government programs, volunteer hours, and monetary donations, the operation of tertiary care services or other critical services or programs not otherwise available in the community, and the operation of hospitals where revenue is insufficient to cover the costs.<sup>38</sup>

#### Texas

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<sup>29</sup> James, Julia. Health Affairs, *Nonprofit Hospitals' Community Benefit Requirements* (2016), available at:

<https://www.healthaffairs.org/doi/10.1377/hpb20160225.954803/full/> (last viewed January 13, 2020); Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

<sup>30</sup> Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

<sup>31</sup> *Managed Medical Assistance Section 1115 Demonstration Waiver Authorities*, (June 8, 2018), p. 29, available at [https://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/federal\\_authorities/federal\\_waivers/docs/mma/Special\\_Terms\\_and\\_Conditions\\_CMS\\_Approved\\_June\\_8\\_2018.pdf](https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/Special_Terms_and_Conditions_CMS_Approved_June_8_2018.pdf) (last viewed January 13, 2020).

<sup>32</sup> Florida Agency for Health Care Administration, *Low Income Pool Background*, available at:

<https://ahca.myflorida.com/Medicaid/Finance/finance/LIP-DSH/LIP/background.shtml> (last viewed January 13, 2020)

<sup>33</sup> Id.

<sup>34</sup> CMS is a federal agency within the U.S. Department of Health and Human Services that administers healthcare coverage through the Medicare, Medicaid, CHIP, and the Health Insurance Marketplace.

<sup>35</sup> Health Resources and Services Administration, *Disproportionate Share Hospitals*, <https://www.hrsa.gov/opa/eligibility-and-registration/hospitals/disproportionate-share-hospitals/index.html>.

<sup>36</sup> MedicaidGov, *Medicaid Disproportionate Share Hospital (DSH) Payments*, <https://www.medicaid.gov/medicaid/finance/dsh/index.html>.

<sup>37</sup> Utah State Tax Commission, Property Tax Division, *Property Tax Exemptions, Standards of Practice 2, Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards, Appendix 2B* (May 2018) available at: <https://propertytax.utah.gov/standards/standard02.pdf> (last viewed January 13, 2020).

<sup>38</sup> Id.

Texas requires hospitals to provide a minimum level of charity care in order to qualify for a property tax exemption.<sup>39</sup> The minimum level of charity care may be calculated in one of the following ways<sup>40</sup>:

- Charity care and government-sponsored indigent health care must be provided at a level that is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;
- Charity care and government-sponsored indigent health care must be provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;
- Charity care and government-sponsored indigent health care must be provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or
- Charity care and community benefits must be provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

### Illinois

Illinois requires hospitals to demonstrate that the value of charitable services it provides to address the health care needs of low-income or underserved individuals equals or exceeds the hospital's property tax liability in order to qualify for a property tax exemption.<sup>41</sup> The value of a hospital's charitable services is calculated by determining the value of the following services and activities provided by it<sup>42</sup>:

- Free or discounted services;
- Support for government health programs for low-income individuals;
- Government subsidies that pay for or subsidize activities or programs related to health care for low-income or underserved individuals;
- Unreimbursed costs for the treatment of low-income patients; and
- Relief of the burden of government related to health care of low-income individuals.

### **Effect of Proposed Changes**

The bill requires that the value of charity care provided by a hospital in each county be compared to the tax value of the hospital's property exemption in each county. If the value of the charity care is less than the tax value of the all of the hospital's exempt property, then the hospital's exemption on each parcel in a county will be reduced to reflect the ratio of the hospital's charity care in the county to the tax value of all of the hospital's exempt property in the county. The language sets forth specific computations for the above.

The bill requires hospitals when applying for the exemption each year to provide their IRS form 990, schedule H, and a schedule displaying; 1) the value of charitable services provided or performed in each Florida county in which a hospital's properties are located; and 2) the portion of charitable services reported by the hospital on its most recently filed IRS Form 990, schedule H, attributable to the services and activities provided or performed by the hospital outside of Florida. The sum of the amounts provided in the schedule must equal the total net community benefit expense reported by the hospital on its most recently filed IRS Form 990, schedule H.

The bill also requires hospitals to provide a statement signed by the hospital's CEO and an independent certified public accountant that the information submitted is true and correct.

The bill provides an effective date of July 1, 2020.

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<sup>39</sup> See Tex. Health and Safety Code Ann. §11.1801.

<sup>40</sup> Id.

<sup>41</sup> See 35 ILCS 200/15-86(c).

<sup>42</sup> Id.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 196.197, F.S., relating to Additional provisions for exempting property used by hospitals, nursing homes, and homes for special services.

**Section 2:** 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 has estimated that the bill would have a positive, indeterminate revenue impact on local governments.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Hospitals that currently qualify for a full property tax exemption may have a tax liability if the value of their community benefit value is less than the value of taxes that would apply if their property was not otherwise exempt.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Rule-making is unnecessary to implement the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 11, 2020, the Ways and Means Committee adopted a strike-all amendment and reported the bill favorably. The amendment clarifies that the comparison of the value of charity care to tax value of the current exemption is to be done at the county-wide level instead of at the parcel level. The amendment added and defined additional terms used in the calculation of the hospital's tax exemption and explicitly included the property taxation of tangible personal property in the calculations.

The amendment also requires hospitals to provide additional documentation with their application for exemption. Specifically, the amendment requires hospitals to include a schedule displaying the value of charitable services attributable to the hospital properties in each Florida county where the properties for which the hospital is seeking a tax exemption are located and the portion of charitable services and activities provided or performed by the hospital outside of Florida. The sum of the amounts provided in the schedule must equal the total net community benefit expense reported by the hospital on its most recently filed IRS Form 990, schedule H.

This analysis is drawn to the bill as amended by the Ways and Means Committee.