

**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.)

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

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BILL: SB 1214

INTRODUCER: Senator Gruters

SUBJECT: Nonprofit Taxation

DATE: March 8, 2021

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	Ryon	CA	<b>Pre-meeting</b>
2. _____	_____	FT	_____
3. _____	_____	AP	_____

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## **I. Summary:**

SB 1214 provides that, in order to retain a property's ad valorem tax exemption for charitable, religious, scientific, educational, or literary purposes, any revenue derived from the incidental use of the property must support the exempt use. The bill defines "incidental use" as any use that is ancillary, supportive, or subordinate to the predominant use and includes uses by vendors in privity with the exempt entity.

The bill will likely reduce the number of charitable organizations eligible for an ad valorem exemption due to the new incidental use test proposed in the bill.

The bill takes effect July 1, 2021.

## **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.<sup>1</sup> The property appraiser annually determines the assessed or "just value"<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment

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<sup>1</sup> 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.

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

limitations, and exemptions to determine the property's "taxable value."<sup>3</sup> 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 taxes<sup>4</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> 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;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### **Ad Valorem Exemption for Educational, Literary, Scientific, Religious, or Charitable Organizations**

When calculating ad valorem taxes, a property's value is reduced by any exemptions provided by law, including exemptions for educational, literary, scientific, religious, or charitable purposes.<sup>11</sup> The Legislature implements these constitutional exemptions and set forth the criteria to determine whether property is entitled to an exemption.<sup>12</sup>

Section 196.196, F.S., gives tax assessors a guide to assessing and exempting property.<sup>13</sup> In determining whether the use of a property qualifies the property for an educational, literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities.<sup>14</sup> The portions of the property used predominantly for qualified purposes are exempt from ad valorem taxation, and if the property owned by an exempt organization is used exclusively for exempt purposes, it is totally exempt from ad valorem taxation.<sup>15</sup>

Incidental use of otherwise exempt property for non-exempt purposes does not make the property non-exempt. Likewise, mere incidental educational, literary, scientific, religious, or

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<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> FLA. CONST. art. VII, s. 3.

<sup>12</sup> Section 196.196, F.S.

<sup>13</sup> *State ex rel. Cragor Co. v. Doss*, 150 Fla. 486, 8 So.2d 15 (1942).

<sup>14</sup> Section 196.196(1), F.S.

<sup>15</sup> Section 196.196(2), F.S.

charitable use of property does not qualify the property for the exemption.<sup>16</sup> For example, a nursing home which operated as a business, collecting fees for services and increasing in value, was not granted a charitable exemption even though, incidental to business operations, they allowed some residents to pay reduced or zero fees.<sup>17</sup>

By default, property used for profitmaking purposes is subject to ad valorem taxation.<sup>18</sup> Profitmaking does not include uses not requiring a business or occupational license which produce revenue then used wholly for exempt purposes. For example, hosting bingo on exempt property, the profits from which being used for exempt purposes, does not impair the property's exempt status.<sup>19</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 196.196(2), F.S., to provide that in order to retain the charitable, religious, scientific, educational, or literary property tax exemption for an otherwise exempt property, any revenue derived from the incidental use of the property must support the exempt use. Under current law, revenue from incidental use can flow to any use, such as a church using its premises for a one-time fundraiser benefitting another cause, charitable or not. This provision, therefore, constricts what properties will be exempt from ad valorem taxes.

The bill defines “incidental use” as “any use that is ancillary, supportive, or subordinate to the predominant use,” specifically including “uses by vendors in privity with the applicant.” Ordinary understanding of “incidental” means insignificant, adjacent, or subordinate use. Including “ancillary” and “supportive” uses in the definition of “incidental use” expands the meaning of the phrase.

The bill takes effect July 1, 2021.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>16</sup> Section 196.196(2), F.S.

<sup>17</sup> *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So.2d 176 (Fla 2d DCA 1965).

<sup>18</sup> Section 196.196(4), F.S.

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

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 reviewed the fiscal impact of this bill.

B. Private Sector Impact:

The bill may have a negative fiscal impact on the private sector, in that it may reduce the number of organizations able to claim the ad valorem tax exemption for charitable, religious, scientific, or literary purposes.

C. Government Sector Impact:

The bill may have a positive fiscal impact on local governments due to the possible decrease in the number of organizations able to claim the ad valorem tax exemption for charitable, religious, scientific, or literary purposes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 196.196, F.S.

**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.