

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1387 Determinations for Tax Exemptions

SPONSOR(S): Ways & Means Committee, Gregory

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	16 Y, 2 N, As CS	Davis	Aldridge
2) Local Administration & Veterans Affairs Subcommittee	13 Y, 4 N	Leshko	Miller
3) State Affairs Committee			

SUMMARY ANALYSIS

Property that is government-owned and serves a governmental, municipal, or public purpose is exempt from ad valorem taxation, with certain exceptions. Leasehold interests in property of the United States, of the state or any of its political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state, are exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, or if the lessee is an organization using the property exclusively for literary, scientific, religious, or charitable purposes. This exemption is deemed to be met if the lessee performs a function or serves a purpose which could properly be performed or served by an appropriate governmental unit or which would be a valid subject for the allocation of public funds.

This bill amends s. 196.199(5), F.S., relating to the procedure for applying for property tax exemption of leasehold interests in government property. The changes include providing the exemption remains in place through extensions of the lease that were contemplated in the original lease, and not requiring the lessee to submit further annual applications after the exemption is initially granted if the operations of the lessee do not thereafter change.

The bill also amends the definition of what constitutes a governmental, municipal, or public purpose or function as it relates to lessees of real property designated as an aviation area on an airport layout plan, a public airport, a spaceport, or a deepwater port.

The Revenue Estimating Conference has not reviewed the bill for potential revenue impacts. Staff estimates that there may be a zero or indeterminate negative impact on local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution requires all property to be assessed at just value as of January 1 of each year for purposes of ad valorem taxation.¹ Ad valorem assessments are used to calculate property taxes that fund counties, municipalities, district school boards, and special districts. The taxable value against which local governments levy tax rates each year reflects the just value as reduced by applicable limitations and exemptions allowed by the Florida Constitution.² One such exemption is the exemption of municipal-owned property from ad valorem taxation when that property is used by the municipality for a municipal or public purpose.³

There are currently three cases related to this matter pending before the Second District Court of Appeal (DCA). In *Hillsborough Co. Aviation Auth. v. Henriquez*, the Hillsborough County Aviation Authority (HCAA) is appealing the circuit court decision finding in favor of Bob Henriquez, the Hillsborough County Property Appraiser, holding that certain properties owned by HCAA and leased to various tenants did not qualify as exempt under ss. 196.199(2) and 196.012(6), F.S.⁴ Similarly, in *Gulf Marine Repair Corp. v. Henriquez* and *Tampa Port Auth. v. Henriquez*⁵, Gulf Marine Repair Corporation and Tampa Port Authority are appealing the circuit court decision finding in favor of the Hillsborough County Property Appraiser, holding that land owned by Tampa Port Authority, and leased to tenant Gulf Marine Repair Corporation, was declared to be taxable.⁶

GOVERNMENT PROPERTY EXEMPTION

Property that is government-owned and serves a governmental, municipal, or public purpose is exempt from ad valorem taxation, with certain exceptions.⁷

Leasehold interests in property of the United States, of the state or any of its political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state, are exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, or if the lessee is an organization that uses the property exclusively for literary, scientific, religious, or charitable purposes.⁸ This exemption is deemed to be met if the lessee performs a function or serves a purpose which could properly be performed or served by an appropriate governmental unit or which would be a valid subject for the allocation of public funds.⁹ Specifically, an activity which is undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft fixed base operation, which provides goods and services to the general aviation public in the promotion of air commerce, is deemed an activity that is part of the administration of the airport and serves an essential governmental, municipal, or public purpose or function which would otherwise be a valid subject for the allocation of public funds. Also, an activity undertaken by a lessee which is

¹ Art. VII, s. 9(a), Fla. Const.

² See s. 192.001(2) and (16), F.S.

³ S. 196.199, F.S.

⁴ Initial Brief, *Hillsborough Co. Aviation Auth. v. Henriquez*, 2021 WL 1890723 (Fla. 2d DCA) (No. 2D20-3602).

⁵ These cases are traveling together for review by the same panel of judges.

⁶ Initial Brief, *Gulf Marine Repair Corp. v. Henriquez*, 2021 WL 910134 (Fla. 2D DCA) (2D20-2613) and Initial Brief, *Tampa Port Auth. v. Henriquez*, 2021 WL 910133 (Fla. 2d DCA) (2D20-2605).

⁷ See s. 196.199(1)(a-d), F.S.

⁸ Ss. 196.199(2)(a) and (c) and (4), F.S. (However, a leasehold interest in property of the state may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility).; See also *Straughn v. Camp*, 293 So.2d 689, 695 (Fla. 1974) (“It is the utilization of the leased property from a governmental source that determines whether it is taxable under the Constitution”).

⁹ S. 196.012(6), F.S.

permitted under the terms of its lease of real property designated as a public airport, a spaceport, or which is located in a deepwater port, and deemed to support aviation, airport, aerospace, maritime, or port purposes or operations required for the operation of such facilities is deemed an activity that is part of the administration of the airport, spaceport, or deepwater port and serves an essential governmental, municipal, or public purpose which would otherwise be a valid subject for the allocation of public funds. However, if the entity instead serves a “governmental-proprietary” purpose, which occurs when a nongovernmental lessee utilizes governmental property for profit, the property is not exempt from taxation.¹⁰

Effect of Proposed Changes

This bill clarifies when a governmental, municipal, or public purpose or function is deemed served. Pertaining to an activity undertaken by a lessee on real property designated as an aviation area on an airport layout plan, the bill clarifies that when the lessee uses the property for the administration, operation, business offices and activities related specifically in connection with the conduct of an aircraft fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce, such use would be deemed an activity that is part of the administration of the airport and serves an essential governmental, municipal, or public purpose or function, which would otherwise be a valid subject for the allocation of public funds.

The bill also clarifies that activity undertaken by a lessee under the terms of its lease of real property designated as a public airport, a spaceport, or a deepwater port, and deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation required for the operation of such facility, is deemed an activity that is part of the administration of the airport, spaceport, or deepwater port, and therefore serves an essential governmental, municipal, or public purpose, which would otherwise be a valid subject for the allocation of public funds.

The bill further clarifies and amends the procedure for lessees to apply for the property tax exemption of leasehold interests in government property. The bill allows for a properly-granted property tax exemption to remain valid for the duration of the lease, including extensions of the lease that were originally contemplated. Lessees no longer would be required to submit additional annual applications once the exemption is granted so long as the operations of the lessee do not change after the exemption is granted.

B. SECTION DIRECTORY:

- Section 1: Amends s. 196.012(6), F.S., defining when a governmental, municipal, or public purpose or function shall be deemed to be served or performed.
- Section 2: Amends s. 196.199(5), F.S., addressing leasehold interests in governmental property which may be subject to exemption.
- Section 3: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

¹⁰ *Williams v. Jones*, 326 So.2d 425, 433 (Fla 1975).
STORAGE NAME: h1387a.LAV
DATE: 2/14/2022

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not reviewed the bill for potential revenue impacts. Staff estimates that there may be a zero or indeterminate negative impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities that own leasehold interests in governmental property may be able to retain an exemption to ad valorem taxation for a longer period of time, thereby reducing their ad valorem tax liabilities.

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:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 9, 2022, the Ways & Means Committee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Removes a provision authorizing the Department of Revenue to acknowledge value adjustment board (VAB) petitions are correct.
- Removes a provision specifying actions required of a VAB regarding recommendations of a special magistrate.
- Removes a provision prohibiting property appraisers from appealing VAB decisions where the board found a statutory exemption to apply to a parcel of property.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.