

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2550

SPONSOR: Transportation Committee and Senator King

SUBJECT: Port or Aviation Authorities

DATE: April 21, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	_____
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This CS provides for the creation of a Port or Aviation Authority Ad Valorem Tax Improvement Fund in each county in which a port or aviation authority is operated by a legislatively created entity. The CS provides for deposit of ad valorem taxes paid by such authority to be deposited in the fund, for use by the authority to enhance its facilities. The CS provides for severability if a portion of the act is found unconstitutional. The CS authorizes the tax collector to retain an amount for administrative costs.

Further, the CS provides, to maintain revenue neutrality, the estimate of taxable value for all port or aviation ad valorem tax on real property and tangible personal property can not be used as part of the computation of a district's "local effort." The CS provides all property owned by the United States, the state, counties, and political subdivisions of the state is immune from ad valorem taxation and presumed to be used for governmental purposes unless the property appraiser can establish the property is leased to a nongovernmental entity and is used for nongovernmental purposes.

The CS is repealed January 1, 2030, unless reviewed and saved from repeal by legislative action. The CS will take effect upon becoming law and applies to the 1999 tax rolls.

This CS creates sections 163.71, 163.72, 163.73, 163.74 and 163.75 of the Florida Statutes.

II. Present Situation:

Generally, property owned by the state or its political subdivisions is immune from ad valorem taxation regardless of its use, and property owned by a municipality is exempt from ad valorem taxation if it is used exclusively for municipal or public purposes.

State Immunity

While immunity from taxation for state property is not specifically stated in the Constitution, the courts have consistently ruled such is the case. As early as 1957, in Park-N-Shop Inc. vs. Sparkman, 99 So.2d 571 (Fla. 1957), a case brought by taxpayers complaining the lack of taxes on county owned land allowed the private lessee a competitive advantage. The Florida Supreme Court ruled county property was immune from taxation.

In Dickinson vs. City of Tallahassee, 325 So.2d 1 (Fla 1975), a case involving the levy of a city utility tax on state government, the Florida Supreme Court ruled on state immunity from taxation under the 1968 Florida Constitution. The Court concluded the immunity from tax was inherent in both the state and its political subdivisions, including counties and school districts.

Municipal Exemption

Article VII, section 3(a) of the Florida Constitution states “all property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation, but only if it is used exclusively by the municipality for municipal or public purposes.”

Based on this provision, the determination of what constitutes a municipal or public purpose becomes important. Subsection 196.012(6), Florida Statutes, lists the use of property by a lessee of government owned property, specifically including municipalities and special districts, which are deemed functions serving a governmental, municipal or public purpose.

Special Districts

In Canaveral Port Authority vs. Department of Revenue, 690 So2d. 1226 (Fla 1996), the Florida Supreme Court upheld the Fifth District Court of Appeals decision affirming Brevard County’s authority to assess ad valorem taxes on real property owned by the authority and leased to private entities engaged in nongovernmental activities. The leased properties were being used for warehouses, gas stations, deli restaurants, fish markets, charter boat sites and docks.

The Court reviewed section 315.11, Florida Statutes, (which provides port authorities with statutory exemption from various state and local taxes) in conjunction with the provisions of section 196.199, Florida Statutes, and concluded the exemption in section 315.11, Florida Statutes, had been limited by the Legislature in adopting section 196.199, Florida Statutes. Therefore, ad valorem tax exemption for fee interests in port authority property would only be granted when such property was being used for performing a governmental, municipal, or public purpose as defined in section 196.012(6), Florida Statutes.

III. Effect of Proposed Changes:

This CS provides for the creation of a Port or Aviation Authority Ad Valorem Tax Improvement Fund in each county in which a port or aviation authority is operated by a legislatively created entity. The CS provides for ad valorem taxes paid by such authority to be deposited in the fund, for use by the authority to enhance its facilities. The CS authorizes the tax collector to retain an amount for administrative costs.

Further, the CS provides if any provision of the CS is held unconstitutional, it is the legislative intent the unconstitutional provision will not affect other provisions or applications of the act which can be given effect without the unconstitutional provision. The CS provides, to maintain revenue neutrality, the estimate of taxable value for all port or aviation ad valorem tax on real property and tangible personal property can not be used as part of the computation of a district's "local effort."

The CS provides all property owned by the United States, the state, counties, and political subdivisions of the state is immune from ad valorem taxation and presumed to be used for governmental purposes unless the property appraiser can establish the property is leased to a nongovernmental entity and is used for nongovernmental purposes. The CS provides the purpose of the CS is to effectuate a level playing field between port and aviation operations which are owned and operated by counties and receive ad valorem tax exemptions and those owned and operated by a port or aviation authority.

The CS is repealed January 1, 2030, unless reviewed and saved from repeal by legislative action. The CS will take effect upon becoming law and applies to the 1999 tax rolls.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Proposed Constitutional Revision 10 to Article VII, Section 3 (a), (f) and (g); Article VIII, Section 7 provided:

“All property owned by a municipality and used for governmental or municipal purposes shall be exempt from taxation. All property owned by a municipality not otherwise exempt from taxation or by a special district and used for airport, seaport, or public purposes, as defined by general law, and uses that are incidental thereto, may be exempted from taxation as provided by general law.”

This Constitutional Revision was defeated on the November 1998 ballot 1,754,747 to 1,766,490.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
