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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY AND RESOURCES
ANALYSIS

BILL #: HJR 209

RELATING TO: Tax Exemptions/Seaports & Airports

SPONSOR(S): Representative Maygarden

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
(2) FISCAL POLICY AND RESOURCES YEAS 11 NAYS 0
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

HJR 209 is a House Joint Resolution proposed to amend Article VII, Section 3, of the Florida Constitution. The Resolution provides that all property not otherwise exempt from taxation owned by a municipality or by a special district and used for the purposes of transportation of passengers or cargo at airports or deepwater seaports may be exempted from taxation as provided by general law.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2002. The constitutional amendment will be effective on January 1, 2003, if approved by the voters of Florida.

There is an estimated fiscal impact of $47,000 associated with advertising this amendment. The fiscal impact of the proposed constitutional amendment on Florida's local governments is indeterminate. As discussed in the "Present Situation," based on several decisions by district courts of appeal and the Florida Supreme Court, some property appraisers are not applying current statutory exemptions applicable to airport and seaport property. To the extent passage of the constitutional amendment proposed in this joint resolution results in the application of existing statutory exemptions, local government revenues will be reduced. In addition, any subsequent implementing legislation could have a fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes [X]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Port Authorities & Airport Authorities

Port authorities, or port districts, are units of special purpose government created pursuant to the provisions of any general or special law and which are authorized to own or operate any port facilities. A port authority can also refer to any district or board of county commissioners acting as a port authority pursuant to the provisions of any general or special law. Chapter 315, F.S., grants a variety of powers to port authorities and municipalities that operate ports. Currently, there are fourteen deepwater seaports in Florida.

Individual airport authorities have been created by enactment of local bills in a number of counties. To date, there are twenty-six special airport/aviation districts located within twenty-five counties of the State. Fifteen authorities are dependent special districts, with the remaining eleven operating as independent special districts. The authorizing language for these authorities appears as various chapters of the Laws of Florida, and is not codified in the Florida Statutes. In addition, many airports are operated by units of local government, generally as a department or office within the local government structure.

In general, port authorities and airport authorities are given a broad range of powers in the operation of their respective facilities. Increasingly, however, such authorities are coming into conflict with other governmental entities regarding the uses of public property and their tax status, particularly in the area of leased public property. Such authorities lease land and facilities to private entities engaged in proprietary and for profit activities. As discussed below, county property is immune from taxation, unless the immunity is waived, and retains this immunity when leased to a nongovernmental entity. Municipal and independent special district property, which is not immune from taxation, is exempt from taxation if the property is used exclusively by it for municipal or public purposes. Based on several decisions by district courts of appeal and the Florida Supreme Court, some but not all property appraisers have added airport and seaport properties that are leased to nongovernmental entities to their ad valorem tax rolls. In addition, in some instances, courts have found non-leased municipal and special district property to be subject to taxation due to the use of the property. Litigation has resulted concerning the question of whether such uses of municipal and independent special district property serve a governmental, municipal or public purpose or function and whether such uses qualify for an exemption from taxation.

Ad Valorem Taxation

Article VII, Section 1, of the Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes levied upon real estate and tangible personal property, except as provided by general law. Article VII, Section 9 of the Florida Constitution provides that counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes, and limits these taxes to 10 mills for all county purposes, 10 mills for all municipal purposes, and 10 mills for all school purposes. Additional millage may be levied for the payment of bonds and taxes levied for a period not longer than two years when authorized by vote of the electors.

Immunity and Exemptions from Ad Valorem Taxation

Property may be immune or exempt from ad valorem taxation. Immunity precludes the power to tax. An exemption presupposes the existence of a power to tax, but the power is foreclosed by a constitutional or statutory provision. *Orange State Oil Co. v. Amos*, 130 So 707 (Fla. 1930).

Immunity from Taxation

State and county government immunity from taxation is well established in Florida's jurisprudence. In *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571, 573-74 (Fla.1958), the Florida Supreme Court said that:

> "property of the state and of a county . . . is immune from taxation, and we say this despite the references to such property in (statutes) as being exempt."

In *State ex rel. Charlotte County v. Alford*, 107 So.2d 27, 29 (Fla.1958), the Florida Supreme Court explained and reiterated that view.

> "Although our statutes specifically exempt such State owned lands, such exemption is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government."

Immunity from taxation may be waived, but in *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975), the Florida Supreme Court held that any waiver of immunity would have to be expressly stated in the constitution or by statute.

Governmental Purpose Exemption

Unlike state and county property, municipal property is not immune from taxation. However, municipal property used exclusively by it for municipal or public purposes is exempt from taxation under Article VII, Section 3(a) of the State Constitution, which provides, in part:

> "All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located."

In *Canaveral Port Authority v. Department of Revenue*, 690 So.2d 1226, 1228 (Fla. 1996), the Florida Supreme Court limited immunity from taxation, as follows:

> "Accordingly, we find that only the State and those entities which are expressly recognized in the Florida Constitution as performing a function of the state comprise 'the state' for purposes of immunity from ad valorem taxation. What comprises 'the state' is thus limited to counties, entities providing the public system of education, and agencies, departments, or branches of state government that perform the administration of the state government." (Footnotes deleted)

The court did not explicitly address the tax status of all special district property, but did treat the special district property before it as if it were municipal property.

Additional Exemptions

Article VII, Section 3, of the Florida Constitution, also provides for the following exemptions from ad valorem taxation:

- such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

- household goods, to every head of a family, in an amount fixed by general law, and property, to every widow or widower or blind or totally and permanently disabled person, in an amount fixed by general law, shall be exempt;

- any county or municipality may grant community and economic development ad valorem tax exemptions, for the purpose of its respective tax levy, and subject to general law;

- by general law, an exemption is granted to a renewable energy source device and to the real property on which such device is installed; and

- any county or municipality may grant historic preservation tax exemptions for the purpose of its respective tax levy, subject to the limits of general law.

The Legislature is without authority to grant an exemption from ad valorem taxes where the exemption does not have a constitutional basis. *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978).

Public, Municipal Purpose/Leased Government Property

Constitutional Principles

As noted above, Article VII, Section 3 of the Florida Constitution exempts all property owned by a municipality and used exclusively by it for municipal or public purposes. In addition, the section grants the legislature the authority to exempt municipal property that is used predominantly for educational, literary, scientific, religious, or charitable purposes. Article VII, Section 10 of the Florida Constitution, which restricts state and local government from using their taxing power to aid non-public entities, requires that government property financed by revenue bonds and leased to a private business or association be taxed to the same extent as private property.

Statutory Provisions

Section 196.001, F.S., provides that the following property is taxable, unless specifically exempted:

- All real and personal property in the state and all personal property belonging to persons residing in this state; and

- All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

Section 196.199, F.S., provides the conditions under which property owned and used by governmental units is exempt from taxation. Paragraphs (a), (b) and (c) of subsection (1) exempt from ad valorem taxation property owned by the United States with certain exceptions, property of

the state used for governmental purposes, and all property of the political subdivisions and municipalities of the state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes, except as otherwise provided by law.

Subsection (2) of section 196.199, F.S., provides the conditions under which property owned by governmental entities, but leased to nongovernmental entities, is exempt from taxation. Paragraph (a) specifies that leasehold interest in such property is only exempt from taxation when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in section 196.012(6), Florida Statutes. The paragraph provides that in such cases, all other interests in the leased property shall also be exempt from ad valorem taxation.

Section 196.012(6), F.S., lists the conditions under which the use of governmental property by a lessee is deemed to be serving or performing a governmental, municipal or public purpose or function. Such purpose is demonstrated when the use could properly be performed or served by an appropriate governmental unit, or would otherwise be a valid subject for the allocation of public funds. This section specifically includes use as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration when the real property is used for the administration, operation, business offices and activities related and connected with the conduct of an aircraft full service fixed based operation and provides goods and services to the general aviation public in the promotion of air commerce. As explained in the following discussion of case law, the legislature amended s. 196.012(6), F.S., in 1994 and 1997 to further address airport, port, and other uses of leased public property.

Paragraph (2)(b) of s. 196.199, F.S., requires non-exempt leasehold interests in government-owned property to be taxed in one of three ways:

- If rental payments are made under the lease, the leasehold is taxed as intangible personal property.
- If no rental payments are made under the lease, the leasehold is taxed as real property.
- If the term of the lease is for 100 years or more, the leased property is deemed owned by the non-governmental lessee and is therefore taxed as real property, regardless of whether rental payments are made.

The paragraph further specifies that nothing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee. Section 196.012(6), F.S., provides in part:

> "Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership," buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee."

Paragraph (2)(c) of s. 196.199, F.S., provides that any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable

purposes shall be exempt from taxation. Subsection (4) of section 196.199, F.S., provides that all property owned by a governmental entity which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee other than that described in paragraph (2)(a) shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Subsection (10) provides:

> "Notwithstanding any other provision of law to the contrary, property held by a port authority and any leasehold interest in such property are exempt from ad valorem taxation to the same extent that county property is immune from taxation, provided such property is located in a county described in s. 9, Art. VIII of the State Constitution (1885), as restated in s. 6(e), Art. VIII of the State Constitution (1968)."

Case Law

The permanent owner of leasehold property, not the lessee, is generally taxed for the full value of the property. The government will, however, tax the equitable holder of real estate, rather than the holder of bare legal title. *Bancroft Investment Corp. V. City of Jacksonville*, 27 So.2d 162 (Fla. 1946). A lessee holding government property can be taxed if the property is used for predominantly private purposes and not otherwise exempt. *Walden v. Hillsborough County Aviation Authority*, 375 So.2d 283 (Fla. 1979).
Property owned by the state, or other governmental entities immune from taxation, when leased, remains immune from taxation unless immunity is waived. *Park-N-Shop, Inc. V. Sparkman*, 99 So.2d 571 (Fla. 1957). Leased public property which is not immune from taxation, receives different treatment. In *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975), a case involving the taxation of leasehold interest, the Florida Supreme Court distinguished between governmental/governmental purposes and governmental/proprietary purposes and held that purely proprietary and for profit uses of leased public property are not governmental functions and are not exempt from ad valorem taxation. As applied in subsequent court decisions, under the "governmental/governmental, governmental/proprietary test," if a municipality leases property to a tenant who uses it for governmental/proprietary purposes, the property loses its tax exempt status, unless otherwise exempt. *City of Orlando v. Hausman*, 534 So.2d 1183 (Fla. 5th DCA 1988), *rev. den.*, 544 So.2d 199 (Fla. 1989). Similarly, in the case of *Page v. City of Fernandina Beach*, 714 So.2d 1070 (Fla. 1st DCA 1998), *rev. den.*, 728 So.2d 201, (Fla. 1998), the court held that airport and marina property owned by the City of Fernandina Beach and leased by the city to private parties for the operation of private vendors, was subject to ad valorem taxation.

Both the fee and the leasehold (as intangible property) of municipal property that is leased to a private entity for a nongovernmental purpose are subject to taxation. In the case of *Capital City Country Club, Inc. v. Tucker*, 613 So.2d 448 (Fla. 1993), the Supreme Court held the imposition of ad valorem taxes on the fair market value of a golf course leased by a municipality to a private golf club and the imposition of intangible taxes on the leasehold interest, did not constitute double taxation. The Legislature cannot direct the assessment of leasehold interests on any basis other than fair market value. *Schultz v. TM Florida-Ohio Realty Ltd.*, 577 So.2d 573 (Fla. 1991).

The leading case on the ability of a county to assess ad valorem taxes on a special district because of property owned by the district and leased to a private entity engaged in a nongovernmental activity is *Canaveral Port Authority v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996). The Court examined the tax status of real property owned by the Canaveral Port Authority, formed as an independent special district, and leased to private entities engaged in nongovernmental activities and used as warehouses, gas stations, deli restaurants, fish markets, charter boat sites and docks. The Canaveral Port Authority argued that it was a political subdivision of the state and therefore as a political subdivision, was immune from ad valorem taxation. The court disagreed and held that

port real property is only exempt when the property is being used for a purpose which is specifically set forth in s. 196.199(2) and (4), F.S. [That is, only where the lessee is using the property for a governmental, municipal, or public purpose or function, or the property is being used by an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.] If the fee is being used for any purpose other than those set forth in s. 196.199(2) and (4), F.S., then the fee interest is subject to taxation.

The Court also addressed an additional statutory exemption from ad valorem taxation. The port authority argued that section 315.11, F.S. (1991), provided an exemption from various state and local taxes, an exemption which was not dependent on the use of the property. The Court rejected this argument. The Court reviewed section 315.11, F.S., in conjunction with the provisions of section 196.199, Florida Statutes, 1996 Supplement, and concluded that the exemption in section 315.11, F.S., had been limited by the Legislature in adopting section 196.199, F.S., 1996 Supplement; therefore, an ad valorem tax exemption for fee interests in port authority property would only be granted when such property is being used for a purpose which is specifically set forth in paragraphs (2) and (4) of section 196.199, F.S. In holding that the property at issue was not exempt from ad valorem taxation, the Court cited previous opinions holding that the operation of commercial establishments on governmental property is purely proprietary and for profit. The Court found that "[N]o rational basis exists for exempting from ad valorem taxation a commercial establishment operated for profit on CPA [Canaveral Port Authority] property while a similar establishment located near, but not on, CPA property is not exempt." *Canaveral Port Authority v. Department of Revenue*, 690 So.2d 1226, 1229 (Fla. 1996).

Following the Florida Supreme Court's opinion in *Canaveral Port Authority v. Department of Revenue*, 690 So.2d 1226 (Fla. 1996), the Legislature enacted chapter 97-255, L.O.F., which amended s. 196.012(6), F.S., to add:

> "Any activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as a public airport as defined in s. 332.004(14) by municipalities, agencies, special districts, authorities, or other public bodies corporate and public bodies politic of the state, a spaceport as defined in s. 331.303(19), or which is located in a deepwater port identified in s. 403.021(9)(b) and owned by one of the foregoing governmental units, subject to a leasehold or other possessory interest of a nongovernmental lessee that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation shall be deemed an activity that serves a governmental, municipal, or public purpose."

In the same act, the Legislature declared that: "for the purposes of s. 199.199(1), special districts shall be treated as municipalities."

The intent of this amendment to section 196.012(6), F.S., as read into the House Journal on April 28, 1997, on page 1111 is "not intended to affect any Florida court decisions, but to provide stability and comfort to airlines and shipping lines that the activities of nongovernmental lessees at airports and ports which are aviation-airport related and port and maritime related will continue to be exempt from property taxes."

In a subsequent and related case, *Sebring Airport Authority v. McIntyre*, 718 So.2d 296 (Fla. 2nd. DCA 1998), the Second District Court of Appeal held a 1994 amendment to s. 196.012(6), F.S., unconstitutional. From the 1970s to 1991, the Sebring Airport Authority operated the annual "Twelve Hours of Sebring" race on property it still owns. In 1991, the Authority entered into a lease agreement with a for-profit corporation, the Sebring International Raceway, to run the race. The Raceway sought and was denied a property tax exemption on its leasehold. The denial was affirmed by the Florida Supreme Court in 1994. *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994). The Court stated:

> "Serving the public and a public purpose, although easily confused, are not necessarily analogous. A governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for proprietary and for-profit aims. We have no doubt that Raceway's operation of the racetrack serves the public, but such service does not fit within the definition of a public purpose as defined by section 196.012(6). Raceway's operating of the racetrack for profit is a governmental-proprietary function; therefore, a tax exemption is not allowed under section 196.199(2)(a)."

The legislature then passed a new law authorizing a property tax exemption for leaseholds of this type. The Legislature enacted chapter 94-353, L.O.F., which amended s. 196.012(6), F.S., to provide:

> "The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission. If property deeded to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historic preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose."

But the Raceway again was denied an exemption. The trial judge and Second District Court held the exemption unconstitutional. Regarding the 1994 amendment to s. 196.012(6), F.S., the Second District Court stated that the legislature's redefinition of the term "governmental, municipal or public purpose or function" conflicts with the Florida Constitution because the redefined phrase conflicts with the normal, ordinary meaning of the phrase. The court found that the 1994 amendment to s. 196.012(6), F.S., is an impermissible attempt by the legislature to create a tax exemption that is not authorized by the Florida Constitution. The court noted that property enjoys a mandatory ad valorem tax exemption if the property is owned by the municipality, used by the municipality for a municipal or public purpose, and located within the municipality. However, the court stated that if the municipality chooses to lease the property and permits it to be used by some other entity, then the mandatory ad valorem tax exemption ceases. Noting that the constitution also permits the legislature by general law to provide an exemption if the property is being used for educational, literary, scientific, religious or charitable purposes, the court concluded that nothing in Article VII, Section 3 of the Florida Constitution allows the Legislature to exempt from ad valorem taxation municipally owned property or any other property that is being used primarily for a proprietary purpose or for any other purpose other than a governmental, municipal or public purpose. Finally, the court also stated that even property that is owned by a municipality but used by it for other than a governmental purpose looses its tax exemption. *Sebring Airport Authority v. McIntyre*, 718 So.2d 296 (Fla. 2nd. DCA 1998).

This decision was appealed to the Florida Supreme Court, which granted review (729 So.2d 390). Oral arguments were held on September 2, 1999. The Court has not issued an opinion. (*Florida Dept. of Revenue v. C. Raymond McIntyre*, Nos. 94,105 & 94,118).

In the most recent case involving airport property, the City of Orlando and the Greater Orlando Airport Authority appealed a judgment from the Circuit Court for Orange County in favor of the property appraiser for Orange County which held that real and personal property used in the operation of a hotel on airport property was subject to taxation. The Fifth District Court of Appeal affirmed this decision. The court distinguished the operation of a hotel by a municipality from the operation of a marina or park by a municipality and found that the purpose of the hotel was not to serve citizens of Orlando, but rather, persons who reside elsewhere and require public

accommodations. The court concluded that the hotel's purpose was to make a profit and not to provide for the citizens of Orlando. *Greater Orlando Aviation Authority, et al. v. Richard Crotty*, 25 Fla. L. Weekly D2689 (Fla. 5th DCA November 17, 2000)

Finally, in a recent circuit court decision involving a tax assessment imposed on the property of an independent special district, the trial judge found the 1997 amendment to section 189.403(1), F.S., unconstitutional. The amendment (ch. 97-255, L.O.F.) declared that "for the purposes of s. 199.199(1), special districts shall be treated as municipalities." *Sun 'N Lake of Sebring Improvement District v. C. Raymond McIntyre*, No. 95-462, 96-523, 98-349 (Fla. 10th Cir. Ct. July 22, 1999).

Constitution Revision Commission

The Constitutional Revision Commission placed the following language on the 1998 general election ballot as part of Revision #10 that proposed the following amendment to Article VII, Section 3, of the Florida Constitution:

> (a) All property owned by a municipality and used ~~exclusively by it~~ for governmental or municipal ~~or public~~ 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. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

Revision #10 was the only one proposed by the Commission that was not approved by the voters.

Constitutional Provision for Amending the Constitution

Article XI, Section 1, of the Florida Constitution, provides the Legislature the authority to propose amendments to the Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

C. EFFECT OF PROPOSED CHANGES:

HJR 209 is a House Joint Resolution proposed to amend Article VII, Section 3, of the Florida Constitution. The Resolution provides that all property not otherwise exempt from taxation owned by a municipality or by a special district and used for the purposes of transportation of passengers or cargo at airports or deepwater seaports may be exempted from taxation as provided by general law.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2002. The constitutional amendment will be effective on January 1, 2003, if approved by the voters of Florida.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, Section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately $47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. (See "Fiscal Comments.")

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. (See "Fiscal Comments.")

D. FISCAL COMMENTS:

HJR 203 proposes an amendment to the Florida Constitution to be submitted to the electors of Florida for approval or rejection. The fiscal impact of the proposed constitutional amendment on Florida's local governments is indeterminate. As discussed in the "Present Situation," based on several decisions by district courts of appeal and the Florida Supreme Court, some property appraisers are not applying current statutory exemptions applicable to airport and seaport property. To the extent passage of the constitutional amendment proposed in this joint resolution results in the application of current statutory exemptions not currently being applied, local government revenues will be reduced. In addition, any subsequent implementing legislation could have a fiscal impact on local governments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Status of Special District Property

As discussed in the "Present Situation" section of the analysis, in *Canaveral Port Authority v. Department of Revenue*, 690 So.2d 1226, 1228 (Fla. 1996), the Florida Supreme Court limited immunity from taxation, as follows:

> "Accordingly, we find that only the State and those entities which are expressly recognized in the Florida Constitution as performing a function of the state comprise 'the state' for purposes of immunity from ad valorem taxation. What comprises 'the state' is thus limited to counties, entities providing the public system of education, and agencies, departments, or branches of state government that perform the administration of the state government." (Footnotes deleted)

The court did not explicitly address the tax status of all special district property, but did treat the special district property before it as if it were municipal property. In his dissenting opinion, Justice Overton stated that under the majority's opinion, counties and school districts are immune from taxation, municipalities are constitutionally exempt, and special districts fall into a third category judicially created by the court with no basis in the Florida Constitution.

Representatives of several associations representing special districts have expressed concern that the tax exempt status of special district property could be adversely affected if the Florida Constitution is amended pursuant to the provisions of HJR 209. In brief, their concern is that amending the constitution to authorize the Legislature to exempt specific types of special district property -- airport and seaport property used for the purposes of transportation of passengers and cargo -- could be interpreted by a court to limit exemption for special district property to only these instances.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

2000 Legislation

During the 2000 Legislative Session, Representative Maygarden filed HJR 1899, which proposed the following amendment to Article VII, Section 3 of the Florida Constitution:

> (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. Property that is not otherwise exempt from taxation and that is owned by a municipality or special district and used for airport or seaport purposes may be exempted from taxation, as provided by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

On May 2, 2000, HJR 1899 was read a third time, one amendment was adopted, and the joint resolution was passed. The adopted amendment deleted airports from the joint resolution. The joint resolution died in the Senate.

HJR 209 is similar but not identical to the original HJR 1899 filed during the 2000 Legislative Session. While HJR 1899 allowed the Legislature to exempt municipal and special district property used for airport and seaport purposes, HJR 209 further restricts this authority by limiting any legislatively authorized exemption to municipal and special district property "used for the purposes of transportation of passengers or cargo at airports or deepwater seaports."

Proponents

According to proponents of HJR 209, this joint resolution addresses a problem that has emerged recently whereby property leased at some seaports and airports is being taxed while others around the state are not, creating an uneven playing field. In addition, proponents argue that the current law places non-immune Florida ports at a disadvantage with ports in other states, which do not typically apply property taxes to leased port property.

Representatives of the Florida Marine Industries Association and the Tampa Port Authority expressed support for HJR 209.

A representative of the Florida Association of Property Appraisers indicated the association does not oppose HJR 209 as currently drafted.

Opponents

A representative of the Property Appraisers' Association of Florida indicated the association opposes HJR 209.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments to this bill were adopted in Fiscal Policy and Resources on April 4, 2001. The first amendment made two changes. First it added "or Special Districts" to the first sentence of the affected constitutional provision. This change was made to reflect the current case law in this area as expiated in Canaveral and discussed in the "current law" section of the bill. This language should clarify that no change in the taxable status of special districts other than airports and deepwater seaports is intended by this amendment. In addition, the language of the amendment was altered to specify that only property used "exclusively in providing services for the transportation of passengers or cargo" may be exempted. This change was intended to clarify that non-moving property, such as docks and loading ramps may also be exempt.

The second amendment is a conforming change to the ballot language.

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:	Staff Director:
Thomas L. Hamby, Jr.	Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:	Staff Director:
Kama Monroe	Greg Turbeville