SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SJR 948

SPONSOR: Senator Horne

SUBJECT: Taxes/Property/Airports & Seaports

DATE: March 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable
2.			TR	
3.			FT	
4.			RC	
5.				
6.				

I. Summary:

The bill sets forth a senate joint resolution proposing a constitutional amendment to authorize the legislature to exempt, from ad valorem taxation, property owned by a municipality or special district and used for the transportation of passengers or cargo at airports or deepwater seaports.

II. Present Situation:

Seaport and 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.

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, units of local government operate many airports, 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 their operation of their respective facilities. Increasingly, however, such authorities are coming into conflict with other governmental entities in the area of leases. Such authorities are leasing land or facilities to private entities engaged in nongovernmental activities. While there is little debate

that the private lessees are subject to taxation on their leasehold interest, counties have started assessing a tax on the special district itself.

Ad Valorem Taxation

The Florida Constitution provides that counties, school districts, and municipalities must be authorized by law to levy ad valorem taxes. (Fla. Const. art. VII, s. 9.) Section 196.001, F.S., subjects the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; 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.

Article VII, section 2, of the Florida Constitution requires:

> All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . .

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

> All real and personal property in the state 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.

Just Valuation

Article VII, section 4, of the Florida Constitution requires:

> By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . .

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

Immunity and Exemptions from Ad Valorem Taxation

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 *Alford v. State*, 107 So.2d 27, 29 (Fla.1958), the 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 . . ..

Governmental Purpose Exemption

Unlike state and county property, municipal property is not immune from taxation. However, municipal property is exempt from taxation under Article VII, Section 3(a) of the State Constitution. Article VII, section 3 of the Florida Constitution provides for exemptions from ad valorem taxation. Paragraph (a) provides:

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

In *Canaveral Port Authority v. Department of Revenue*, 690 So.2d. 1226 (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. While 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 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.

In distinguishing between the state and counties, which are immune from taxation, and municipalities and special districts, which are exempt from taxation, the court states:

> 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 Supreme Court, therefore, treats the property of an independent special district property as exempt in the same fashion as a municipality from taxation under current law, rather than immune. As stated above, the fee of exempt property is subject to ad valorem taxation where a leasehold to such property is not used for governmental or literary, scientific, religious or charitable purposes.

The Court also addressed the 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 rejects this argument:

> Although the legislature did not expressly repeal the exemption provided by section 315.11, we find that by passing chapter 71-133, it imposed a limitation on that exemption. In view of the express language used in sections 196.001, 196.199(2), and 196.199(4), particularly the term "authorities," we conclude that the legislature intended to provide only a limited exemption for fee interests in port authority property. Together, sections 196.001, 196.199(2), and 196.199(4) require ad valorem taxation of fee interests in property owned by an authority and subject to a lease by a nongovernmental lessee unless the lessee is serving a governmental, municipal, or public purpose or function as defined in section 196.012(6) or uses the property exclusively for a literary, scientific, religious, or charitable purpose.

Leased Government Property

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. *R.R. Walden v. Hillsborough County Aviation Authority,* 375 So.2d 283 (Fla. 1979). 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).

Property owned by the state, or other governmental entities immune from taxation, when leased, remains immune from taxation. *Park-N-Shop, Inc. v. Sparkman,* 99 So.2d 571 (Fla. 1958). Leases by municipalities and other public bodies which are not immune from taxation, receive different treatment. If such an entity leases property to a tenant who performs an intrinsically public function, the property is exempt from taxation. *Hillsborough County Aviation Authority* v. *R.R. Walden,* 210 So.2d 193 (Fla. 1968). If, on the other hand, a municipality leases property to a

tenant who uses it for predominantly private purposes, the property loses its tax exempt status, unless otherwise exempt. *City of Orlando v. Hausman*, 534 So.2d 1183 (Fla. 5th DCA 1988).

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. Similarly, in the case of *Page v. City of Fernandina Beach*, 714 So.2d 1070, (Fla. 1st DCA 1998), rev. den. 728 So. 2d 210, (Fla. 1998), the court held that airport and marina property owned by the City of Fernandina Beach and leased by city to private parties for the operation private vendors, was subject to ad valorem taxation.

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 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), F.S. This paragraph excludes from the exemption property leased for use as a multipurpose hazardous waste treatment facility. Paragraph (b) deals with undeveloped lands and use of property for residential or commercial rentals and provides that the leasehold or other interest shall be taxed only as intangible personal property if the rental payments are due in consideration of such leasehold or other interest. Paragraph (c) includes in the exemption any governmental property leased to an organization, which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Subsection (4) of section 196.199, F.S., provides that all property owned by a government entity which is leased to a nongovernmental lessee, except that described in paragraph (2)(a), is 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) of section 196.199, F.S., 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). This subsection only applies to Miami-Dade County and Consolidated Jacksonville/Duval County.

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. Other uses specifically included are a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach, when open to the general public with or without an admission charge.

In, *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 Florida Supreme Court affirmed the denial 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 the property enjoys a mandatory ad valorem tax exemption if the municipality owns the property, 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 "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 amendment 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 voted on 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 Secretary of State's office or may be placed at a special election held for that purpose.

III. Effect of Proposed Changes:

The Senate Joint 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 Senate 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

If the proposed ballot amendment is approved by the voters and the legislature enacts the ad valorem tax exemption, some local governments who are currently collecting ad valorem taxes over airport and seaport property covered by the proposed exemption will lose revenue. However, as the proposed constitutional amendment is not self-executing, the amendment itself does not remove revenue-generating capacity of local government.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The tax exemption for municipal or special district property used for airport or a seaport purpose proposed by the constitutional amendment is not self-executing but allows the legislature to exempt said property by general law.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.