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HOUSE OF REPRESENTATIVES

FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/HJR 833

RELATING TO: Municipal & Special District Property

SPONSOR(S): Committee on Local Government & Veterans Affairs and Representative Carassas

TIED BILL(S): None

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

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

I. SUMMARY:

HJR 833 proposes to amend Article VII, Section 3, of the Florida Constitution. This proposed amendment will expand a current constitutional ad valorem tax exemption for property owned by a municipality and used exclusively by the municipality for municipal or public purposes to provide an exemption for property owned by a municipality or special district and used for governmental or municipal purposes. In addition, the proposed amendment 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 or used for purposes for which public funds may be expended may be exempted from taxation as provided by general law.

HJR 833 provides for the 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 state fiscal impact of $47,000 associated with advertising this amendment. The proposed amendment reduces local governments' ad valorem tax base, and will reduce private, municipal and special district expenditures for ad valorem taxes associated with exempted property. Deleting the expression "used exclusively by it" expands the exemption to include property not currently exempt from ad valorem taxation. The fiscal impact on local government revenues is negative but indeterminate.

The authorization for the Legislature to exempt all property not otherwise exempt from taxation owned by a municipality or by a special district and used for purposes for which public funds may be expended, if implemented by general law, also will reduce the ad valorem tax base, as well as private, municipal and special district expenditures for ad valorem taxes on exempted property. The fiscal impact of this provision, if implemented by general law, is estimated to be a $11.8 million reduction to local revenues.

On February 14, 2002, the Fiscal Policy and Resources Committee adopted two amendments to the Committee Substitute. These amendments continue the requirement that the property be exclusively used by the municipality or special district as a condition of the tax exempt status.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A []*
2.	Lower Taxes	Yes []	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:

*Less Government: The effect this resolution will have on the level of government is unclear. The resolution does not require any new government employees, does not create any authority to make rules or adjudicate disputes, does not create any new responsibilities, obligations, or work for other governmental or private entities, and does not create an entitlement to any service or commodity provided by the government. However, by creating or allowing new tax exemptions, the resolution may provide government an economic advantage over private property owners in its proprietary activities and may result in more government proprietary enterprises. Moreover, by creating or allowing new tax exemptions for municipal and special district property, the resolution may make it cheaper to lease from government than from a private owner. This will depend on whether the tax savings accrue to the lessor or the lessee.

*Lowers Taxes: While this joint resolution reduces ad valorem taxes by exempting additional property, the overall effect may be to shift the tax burden to non-exempt property through increased millage rates.

B. PRESENT SITUATION:

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, county, and school district 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. 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.

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. 189.403(1), F.S., to declare that: "for the purposes of s. 199.199(1), special districts shall be treated as municipalities."

In a 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. 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). On appeal, the Second District Court of

Appeal reversed that part of the circuit court's judgment that held the 1997 amendment to section 189.403(1), F.S., unconstitutional. The court found that though the property appraiser's challenge to the constitutionality of the section may have merit, the property appraiser lacked standing to raise the constitutional challenge to the statute. Sun 'N Lake of Sebring Improvement District v. C. Raymond McIntyre, 2001Fla. App. Lexis 17149; Fla. L. Weekly D 2859.

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.

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 special district property 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.

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 issued its opinion April 5, 2001. The Sebring Airport Authority and Sebring International Raceway, Inc. v. McIntyre, Nos. 94,118 and 94,105 (Fla. Apr. 5, 2001). The Court found that the 1994 amendment to s. 196.012(6), F.S., attempts to create an ad valorem tax exemption for private, profit-making ventures conducted upon property leased from a governmental entity; a result the Court found the Florida Constitution does not allow. In its opinion, the court noted that the language presently contained in the first sentence of article VII, section 3(a) of the Florida Constitution, reflects a marked change from its counterpoint in the 1885 Constitution, under which the phrase "municipal . . . purposes" was broadly interpreted to include any "public" purpose. The court stated that Williams heralded a judicial abandonment of the broad exemption theory, and stated it has long been clear that, based upon the amendments resulting from the 1968 Constitution, the "public purpose" standard applicable in tax cases is the "governmental-governmental" standard. The court also addressed the distinction between bond validation cases and ad valorem tax cases, noting that it is the constitutional prohibition against lending "its taxing power or credit" to aid private entities which requires an analysis historically described as "public purpose" in bond validation cases. In contrast, ad valorem tax exemptions must be analyzed using the provisions of article VII, section 3(a) of the Florida Constitution.

In concluding its opinion, the court expressed its understanding that there is enormous competition to secure professional athletic teams and other forms of entertainment and economic development which benefit Florida citizens. However, the court found that under the current constitution, neither the Legislature nor the court may expand the permissible exemptions.

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)

Constitution Revision Commission

The Constitutional Revision Commission placed the following language on the 1998 general election ballot as part of Revision #10 that proposed, in part, 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 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.

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.

C. EFFECT OF PROPOSED CHANGES:

HJR 833 proposes to amend Article VII, Section 3, of the Florida Constitution. The proposed amendment expands a current constitutional ad valorem tax exemption for property owned by a municipality and used exclusively by it for municipal or public purposes, to provide an exemption for property owned by a municipality or special district and used for governmental or municipal purposes.

In addition, the proposed amendment 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 or used for purposes for which public funds may be expended may be exempted from taxation as provided by general law. (See the "Fiscal Comments" section for a discussion of the proposed amendment's fiscal impact on local government.)

The HJR 833 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:

See EFFECT OF PROPOSED CHANGES.

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 will be approximately $47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. (See "Fiscal Comments.")

2. Expenditures:

Under the proposed constitutional amendment, certain properties owned by municipalities and special districts that are not currently exempt from ad valorem taxation will be exempt. To the extent that such municipalities and special districts currently are paying taxes on these properties, the amendment will reduce tax payments by municipalities and special districts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As discussed below in the "Fiscal Comments" section, if approved by the voters the proposed constitutional amendment will reduce local governments' ad valorem tax base. Private entities leasing public property that is currently taxed that will not be taxed under the amendment, and implementing law, will see a reduction in their obligations to pay taxes if their leasing agreements require them to pay any ad valorem taxes imposed on the leased property. The overall effect may be to shift the tax burden to non-exempt property through increased millage rates.

D. FISCAL COMMENTS:

HJR 833 proposes an amendment to the Florida Constitution to be submitted to the electors of Florida for approval or rejection. As discussed in the "Effects of Proposed Changes" section of the analysis, the resolution revises the first sentence of Article VII, Section 3(a), of the Florida Constitution, to expand the current ad valorem tax exemption for property owned by a municipality and used exclusively by it for municipal or public purposes, to provide an exemption for property owned by a municipality or special district and used for governmental or municipal purposes. Deleting the expression used "exclusively by it" expands the exemption to include property not currently exempt from ad valorem taxation. The extent of the expansion will depend on how property appraisers, and ultimately the courts, apply the proposed change. In addition, adding special district property to the sentence may have the effect of exempting property not currently exempt from taxation. However, as noted in the "Present Situation" section, as a general rule, property appraisers currently treat special district property as if it were municipal property.

The proposed amendment also 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 or used for purposes for which public funds may be expended may be exempted from taxation as provided by general law. 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 municipal and special district property. To the extent passage of the constitutional amendment proposed in this joint resolution results in the application of existing statutory exemptions, local

governments' ad valorem tax base will be reduced. In addition, any subsequent implementing legislation would have a fiscal impact on local governments.

The Impact Conference estimates that if CS/HJR 833 were approved and implemented by general law, the provisions affecting airport and seaport property would have a negative fiscal impact of $11.8 million statewide on local governments.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

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

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This joint resolution does not grant rule-making authority.

C. OTHER COMMENTS:

Advisory Committee on Property Taxation

Section 11 of ch. 2001-137, L.O.F., created the Advisory Committee on Property Taxation. The legislation provided for the committee to consist of 8 members: two appointed by the Governor; two appointed by the President of the Senate, one of whom must be a member of the Senate; two appointed by the Speaker of the House of Representatives, one of whom must be a member of the House of Representatives; the Executive Director of the Department of Revenue; and one member appointed by the Executive Director who must be a property appraiser. The legislation required the committee to study the taxation of airport and seaport property, and allowed the committee to consider taxation of other public facilities and issues related to special districts.

As required by the legislation, the committee submitted a report on the issue to the President of the Senate and the Speaker of the House of Representatives on October 1, 2001. The following is excerpted from the executive summary of the committee's report:

> Because of the short time frame specified in the law, the committee was not able to reach conclusions on two of the most difficult issues regarding the taxation of government property leased to non-government entities. One of the committee's problem statements deals with

unequal constitutional treatment of the various types of governmental entities in Florida. While two of the committee's statements of principle call for equal tax treatment of property "regardless of the type of government that owns it", there are many issues regarding the treatment of property owned by special districts which the committee had insufficient time to address.

In another of the committee's problem statements, "a lack of clarity" is found regarding the definition of "public purpose" as it relates to the taxation of government property leased to non-government entities. Again, time did not permit the committee to fully address solutions to this problem. In its meetings, however, the committee expressed the opinion that the Legislature, either statutorily or through a constitutional amendment if necessary, should work to provide a generally accepted definition of public purpose for ad valorem taxes. The committee believes that this is essential to ultimately resolving these issues.

Another problem statement developed by the committee finds there is a need for consistent administration of the property tax laws across the state. In its statements of principle, the committee states that property appraisers should administer the law consistently from county to county. Addressing the Department of Revenue's role, the committee finds that as part of its on-going efforts to provide aid and assistance to property appraisers, and within current law, the Department should establish guidelines for assessing government property leased to non-government entities to promote consistency to the extent practicable.

In the area of community and economic development, the committee arrived at a consensus on a recommended constitutional amendment to allow cities and counties to grant relief from their own tax levies for a wide range of uses of government property leased to non-government entities . . .

Current law dealing with the ad valorem taxation of government property leased to non-government entities lacks clarity and consistent interpretation and is complicated by unequal constitutional treatment of property owned by the various governmental entities involved. The Advisory Committee on Property Taxation brought together a great deal of expertise on the issue. The advisory committee worked more to clarify the issues involved rather than to propose complete solutions. In one area, that of community and economic development, the advisory committee drafted a proposed constitutional amendment which all members felt was worth pursuing immediately. It is hoped that the Legislature and other parties involved can build off this foundation and develop a tax policy for Florida that is fair to all.

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. <u>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.</u> 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.

2001 Legislation

During the 2001 Legislative Session, Representative Maygarden filed HJR 209, which 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 restricted 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."

HJR 209 died on the House Calendar.

Proponents

The Florida League of Cities expressed its support for HJR 833.
The Florida Association of Special Districts expressed its support for HJR 833
The Florida Facilities Management Association expressed its support for HJR 833
The Canaveral Port Authority expressed its support for HJR 833
The Jacksonville Port Authority expressed its support for HJR 833

Opponents

The Florida Association of Counties expressed its opposition to HJR 833.
The Property Appraisers Association of Florida expressed its opposition to HJR 833.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Committee on Local Government & Veterans Affairs considered HJR 833, adopted one strike-everything amendment, and passed the resolution as a committee substitute. The amendment replaced the body of the resolution with language from the Senate companion, SJR 630. The major effect was to change the ballot language.

On February 14, 2002, the Committee on Fiscal Policy and Resources adopted two amendments to the committee substitute. The first amendment removed the provision of the bill which would have deleted the words "exclusively by it" which currently appear in the Florida Constitution. The second amendment conformed the ballot language with this change.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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	Lynne Overton

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:	Staff Director:
Joe McVaney	David Coburn