

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 814

INTRODUCER: Senator Richter

SUBJECT: Ad Valorem Tax Exemptions

DATE: March 11, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill provides a partial ad valorem tax exemption for nonexempt owners of real property that is leased or gratuitously provided, either exclusively or partially, for an exempt charitable purpose. The bill also provides criteria to be used by property appraisers and value adjustment boards in determining whether a nonexempt entity applying for a charitable exemption is a nonprofit or profit-making venture or whether the property is used for a profit-making purpose. The bill provides additional exceptions for ad valorem taxation of certain properties used for profit-making purposes.

This bill substantially amends the following sections of the Florida Statutes 196.192, 196.195, and 196.196.

**II. Present Situation:**

**Property Tax Assessments**

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.<sup>1</sup> Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.<sup>2</sup>

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<sup>1</sup> See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>2</sup> See s. 193.011(1)-(8), F.S.

Article VII, section 4, of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.<sup>3</sup> The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.<sup>4</sup>

Article VII, sections 3 and 6, of the Florida Constitution permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions.

After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the property's taxable value.

### **Exemptions from Ad Valorem Taxation**

Section 196.192, F.S., provides in part, that:

- (1) All property owned by an exempt entity, including educational institutions, and used *exclusively* for exempt purposes shall be totally exempt from ad valorem taxation.
- (2) All property owned by an exempt entity, including educational institutions, and used *predominately* for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominate use bears to the nonexempt use.<sup>5</sup>

### **Property Entitled to Charitable, Religious, Scientific, or Literary Exemptions**

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.<sup>6</sup> Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. The term "affirmative steps" is defined by statute to mean "environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or

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<sup>3</sup> Section 196.185, F.S.

<sup>4</sup> See FLA. CONST. art. VII, s. 4(d) & (g) (stating that the assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and levies for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.).

<sup>5</sup> Section 196.192(1)-(2), F.S.

<sup>6</sup> Section 196.196(1)(a)-(b), F.S.

other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship.”<sup>7</sup>

In 2009, the Legislature amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken “affirmative steps” to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.<sup>8</sup> The 2009 amendment also provided penalties for properties granted a charitable exemption under this subsection that are transferred for purposes other than affordable housing, or if the property is not actually used as affordable housing, within 5 years after the exemption is granted.

### **Charitable Organizations**

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

### **Determining Profit vs. Non-Profit Status of an Entity**

Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture. When applying for an exemption under this section, an applicant is required to provide the property appraiser with “such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year.”<sup>9</sup>

The applicant must show that “no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.”<sup>10</sup>

Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria outlined in subsection (2) of s. 196.195, F.S., to determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.<sup>11</sup>

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, has determined the applicant to be nonprofit under s. 196.195, F.S.<sup>12</sup>

<sup>7</sup> Section 196.196(3), F.S.

<sup>8</sup> Chapter 2009-96, Laws of Fla. (2009 SB 360).

<sup>9</sup> Section 196.195(1), F.S.

<sup>10</sup> Section 196.195(3), F.S.

<sup>11</sup> Section 196.195(2)(a)-(e), F.S.

<sup>12</sup> Section 196.195(4), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 196.192, F.S., to provide partial ad valorem tax exemptions for nonexempt owners of real property that is leased or gratuitously provided exclusively or partially for an exempt charitable purpose.

- Real property leased or gratuitously provided for the *exclusive use* of the property for exempt charitable purposes shall be exempted in an amount equal to 50 percent of the amount exempted under 196.192(1), F.S.
- In instances where a *portion of* the property is leased or gratuitously provided for exempt charitable purposes, the property shall be exempt from ad valorem taxation to the extent of 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property.

**Section 2** amends s. 196.195, F.S., to clarify the distinctions between exempt and nonexempt entities. The bill provides that the criteria to be used by property appraisers and value adjustment boards in determining whether a *nonexempt* entity applying for a charitable exemption is a nonprofit or profit-making venture or whether the property is used for a profit-making purpose, shall be the same criteria used for exempt entities, which are currently provided under subsection (2), of s.196.195, F.S.

Similar to the statutory requirements currently provided for exempt entities under s. 196.195(1), (3) and (4), F.S., the bill also provides that:

- A nonexempt entity applying for a total or partial exemption shall supply such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year.<sup>13</sup>
- The nonexempt entity must affirmatively show that no part of the subject property, or the proceeds generated by the exclusive or partial use of the property for exempt charitable purposes will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose, with the exception of a reasonable rental payment to the nonexempt entity.<sup>14</sup>
- An application submitted by an exempt entity for a partial exemption as provided in this bill may not be granted for charitable use of property until the exempt charitable lessee or donee has been found by the property appraiser, or value adjustment board on appeal, to be nonprofit under s. 196.195, F.S.<sup>15</sup>

**Section 3** amends s. 196.196, F.S., to add a cross reference to ss. 196.192 and 196.195, as amended in the bill, as additional exceptions for the ad valorem taxation of certain properties used for profit-making purposes.

**Section 4** provides that this act shall take effect July 1, 2011.

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<sup>13</sup> Currently provided under s.196.195(1), F.S.

<sup>14</sup> Similarly provided for exempt entities in s.196.195(3), F.S.

<sup>15</sup> Similarly provided for total use by an exempt entity in s. 196.195(4), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Article VII, section 18(b), of the Florida Constitution, requires any general law that reduces a local government's authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature.<sup>16</sup> By reducing the tax base upon which counties and municipalities may raise ad valorem revenue, this bill will reduce a local government's revenue-raising authority.

Article VII, section 18(d), of the Florida Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.<sup>17</sup> An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 \$1.9 million).<sup>18</sup> A fiscal estimate is not available for this bill. If it is determined that this bill has more than an insignificant fiscal impact, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Non-exempt owners of real property that is leased or gratuitously provided, exclusively or partially for an exempt charitable purpose, will now be exempt from ad valorem taxation in an amount equivalent to 50 percent of the amount exempted under s. 196.192(1), F.S., for exclusive charitable use, or 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property for partial charitable use.

**B. Private Sector Impact:**

Non-exempt owners of real property that is leased or gratuitously provided, exclusively or partially for an exempt charitable purpose will now be exempt from ad valorem taxation in an amount equivalent to 50 percent of the amount exempted under s.196.192 (1), F.S., for exclusive charitable use, or 50 percent of the ratio that such use bears to the nonexempt use of other portions of the property for partial charitable use.

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<sup>16</sup> FLA. CONST. art. VII, s. 18(b).

<sup>17</sup> FLA. CONST. art. VII, s. 18(d).

<sup>18</sup> Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

**C. Government Sector Impact:**

This bill may have an impact on local government revenue as a result of the partial ad valorem tax exemption provided herein. The Revenue Estimating Conference has not determined the fiscal impact of this bill.

The Department of Revenue will need to review and likely amend Form DR-504, Ad Valorem Tax Exemption Application and Return, as a result of this bill.<sup>19</sup>

**VI. Technical Deficiencies:**

In reviewing SB 814, the Department of Revenue indicated that the term “amount exempted” on line 38 of the bill is not applicable since there is currently no amount exempted in instances where the non-exempt entity is the owner under s. 196.192(1), F.S. To address this concern, the Department has recommended the following amendment:

On line 38, after the term “amount” insert “... that, if owned by the exempt entity, could be ...”<sup>20</sup>

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>19</sup> The Department of Revenue, *SB 814 Fiscal Analysis*, at 3 (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).

<sup>20</sup> The Department of Revenue, *SB 814 Fiscal Analysis*, at 4 (Feb. 22, 2011) (on file with the Senate Committee on Community Affairs).