

**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 Committee on Community Affairs

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BILL: CS/SB 924

INTRODUCER: Community Affairs Committee and Senator Hays

SUBJECT: Property Prepared for a Tax-exempt Use

DATE: March 10, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	<b>Fav/CS</b>
2.			FT	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 924 expands the exemption from ad valorem taxation in s. 196.196, F.S., to all property owned by an exempt organization that is taking “affirmative steps” to prepare property to be used for an educational, literary, scientific, religious or charitable purpose.

**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>

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

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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.

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>

### **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>5</sup> Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt entity is used exclusively for exempt purposes, it shall be totally 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
- Other similar activities that demonstrate a commitment to a religious use.<sup>6</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>7</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 s. 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.

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

<sup>4</sup> See FLA. CONST. art. VII, s. 4(d) & (g); FLA. CONST. art. VII, s. 3 and 6 permit a number of additional tax exemptions.

<sup>5</sup> Section 196.196(1)(a)-(b), F.S.

<sup>6</sup> Section 196.196(3), F.S.

<sup>7</sup> Chapter 2009-96, Laws of Fla. (2009 SB 360).

Section 196.012(7), F.S., defines a charitable purpose as a function or service which is of such a community service that its discountenance could legally result in the allocation of public funds for the continuance of the function or the service.

### **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. 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.<sup>8</sup>

When applying for an exemption under s. 196.195, F.S., 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> Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria outlined in s. 196.195(2), 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>10</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>11</sup>

After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the property’s taxable value. The taxable value multiplied by the millage rate equals the property’s yearly tax bill.

### **Affirmative Steps**

The exemption for some charitable, religious, and educational property also applies before the property is actually being used for an exempt purpose, but only while the property owner is taking “affirmative steps” to prepare the property for the exempt use. This treatment is provided to educational property,<sup>12</sup> the portion of religious property where a public house of worship is being constructed,<sup>13</sup> and charitable property on which affordable housing for low-income residents is being constructed.<sup>14</sup>

The term “affirmative steps” is defined by law to mean:

- Environmental or land use permitting activities,
- Creation of architectural or schematic drawings,

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<sup>8</sup> Section 196.195(4), F.S.

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

<sup>10</sup> Section 196.195(2)(a)-(e), F.S.

<sup>11</sup> Section 196.195(3), F.S.

<sup>12</sup> Section 196.198, F.S.

<sup>13</sup> Section 196.196(3), F.S.

<sup>14</sup> Section 196.196(5), F.S.

- Land clearing or site preparation,
- Construction or renovation activities, or
- Other similar activities that demonstrate a commitment to an [exempt] use.<sup>15</sup>

The affirmative steps provision applicable to affordable housing has two limitations. If the owner 1) transfers the property for a purpose other than providing affordable housing, or 2) is not actually using the property to provide affordable housing within 5 years, the owner owes the tax that was avoided by claiming affirmative steps treatment, plus a penalty equal to 50 percent of the taxes owed and interest of 15 percent, per year.<sup>16</sup> If the owner fails to pay the required amounts within 30 days, the property appraiser must file liens on the owner's other properties.<sup>17</sup> The property owner may avoid the 5-year limitation by demonstrating that he or she is continuing affirmative steps.<sup>18</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 196.1955, F.S., to consolidate the current affirmative steps provisions into a single statute and extends the affirmative steps treatment to all property owned by an exempt organization and being prepared for an exempt educational, literary, scientific, religious, or charitable use. The bill defines "affirmative steps" as it is defined in current law.

The bill provides that if property is not in actual use for an exempt purpose within 5 years, the property owner must pay back taxes owed plus 15 percent interest. A tax lien can be placed on the property to collect these taxes if the property owner discontinues taking affirmative steps. The tax lien does not apply to property that an exempt organization is preparing for use as a house of public worship. Public worship is defined as religious worship services and activities incidental to religious worship services, including educational activities, parking, recreation, partaking of meals, and fellowship.

**Sections 2 and 3** delete the current affirmative steps provisions in ss. 196.196 and 196.198, F.S.

**Section 4** provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution states that "[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that the municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

<sup>15</sup> Sections 196.196(3), 196.196(5), and 196.198, F.S.

<sup>16</sup> Section 196.196(5)(b)1., F.S.

<sup>17</sup> Section 196.196(5)(b), F.S.

<sup>18</sup> Section 196.196(5)(b)4., F.S.

Article VII, section 18(d) of the Florida Constitution provides an exemption from the mandates provision for laws having an insignificant fiscal impact. Therefore, the bill may be exempt.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference reviewed substantially similar legislation last year and determined that SB 626 (2014) would have reduced local property taxes by \$1.2 million annually, beginning in Fiscal Year 2015-2016.

**B. Private Sector Impact:**

Exempt organizations that own real property and take affirmative steps to prepare that property for an exempt purpose will receive an exemption from ad valorem taxation.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 196.196 and 196.198.

This bill creates section 196.1955 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on March 10, 2015:**

Changes a word to make it permissive for a property appraiser to serve a tax lien against a property that is not in an exempt use within 5 years, instead of mandatory.

- B. **Amendments:**

None.