

**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: SB 842

INTRODUCER: Senator Hays

SUBJECT: Property Prepared for a Tax-exempt Use

DATE: January 8, 2016

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Present	Yeatman	CA	<b>Favorable</b>
2.		FT	
3.		AP	

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## I. Summary:

SB 842 expands the scope of the ad valorem tax exemption for an exempt organization that is taking “affirmative steps” to prepare property to be used for an exempt purpose. Current law grants this treatment to educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing. The bill expands the applicability of this exemption to include all property being prepared for educational, literary, scientific, religious, or charitable purposes.

The Revenue Estimating Conference has determined that the bill reduces local government revenues by \$1 million in Fiscal Year 2016-2017, with a recurring negative impact of \$1 million.

## II. Present Situation:

### Property Tax Assessments

All property must be assessed at just value for ad valorem tax purposes.<sup>1</sup> 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>2</sup>

The Florida Constitution authorizes the Legislature to provide an exemption for property predominantly used for educational, literary, scientific, religious or charitable purposes by general law.<sup>3</sup>

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<sup>1</sup> FLA. CONST. art. VII, s. 4.

<sup>2</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>3</sup> FLA. CONST. art. VII, s. 3(a).

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

Property used predominantly for educational, literary, scientific, religious, or charitable purposes is exempt.<sup>4</sup> In determining whether the property is predominantly used for an exempt purpose, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by charitable or other qualifying entities.<sup>5</sup> Only the portions of the property used predominantly for an exempt purpose may be exempt from ad valorem taxation.

### Affirmative Steps

Property is also exempt when the owner has taken affirmative steps to prepare for exempt use. This treatment is authorized for property owned by an educational institution that is being prepared for educational use,<sup>6</sup> property owned by an exempt organization that is being prepared as a house of public worship,<sup>7</sup> and property owned by a 501(c)(3) organization that is being prepared to provide affordable housing to extremely-low, very-low, low, and moderate income persons or families.<sup>8</sup> These properties are exempt from tax while they are being prepared for exempt use if the owner has taken “affirmative steps” to prepare the property for exempt use. As such, this treatment is commonly referred to as “affirmative steps” treatment.

The term "affirmative steps" is defined 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 an exempt use.<sup>9</sup>

The affirmative steps treatment for affordable housing requires that the property appraiser serve the property owner with a notice of intent to record a tax lien against any property owned in the county by the property owner if the property is transferred for a purpose other than affordable housing or is not in actual use to provide affordable housing within 5 years after first being granted affirmative steps treatment.<sup>10</sup> Furthermore, the organization owning such property is required to pay the unpaid taxes, an additional 15 percent interest per annum, and a penalty equal to 50 percent of the taxes owed. The property owner has 30 days to pay the taxes, penalties, and interest, after which the property appraiser may file a lien against any property owned by the organization.<sup>11</sup> However, the property appraiser may grant an extension if the property owner can demonstrate that the owner is still taking affirmative steps.<sup>12</sup> If an exemption is improperly

<sup>4</sup> Sections 196.196(2) and 196.198, F.S. *See also* s. 196.1978, F.S. (providing that certain property used to provide affordable housing is property used for a charitable purpose).

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

<sup>6</sup> Section 196.198, F.S.

<sup>7</sup> Section 196.196(3), F.S. “Public worship” is defined to mean religious worship services and incidental activities such as educational activities, parking, recreation, partaking of meals, and fellowship.

<sup>8</sup> Section 196.196(5)(a), F.S.

<sup>9</sup> Sections 196.196(3),(5)(a), and 196.198, F.S.

<sup>10</sup> Section 196.196(5)(b), F.S.

<sup>11</sup> Section 196.196(5)(b), F.S.

<sup>12</sup> Section 196.196(5)(b)4, F.S.

granted as a result of a clerical mistake or an omission by the property appraiser, the organization improperly receiving the exemption may not be assessed a penalty or interest.<sup>13</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. The section provides that property owned by an exempt organization is considered to be used for an exempt purpose if the owner has taken affirmative steps to prepare the property for an exempt educational, literary, scientific, religious, or charitable use and no part of the property is being used for a nonexempt purpose. The bill retains the current definition of “affirmative steps” and all organizations that qualify for affirmative steps treatment under current law (educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing) continue to qualify for such treatment under the bill.

The section provides that if property granted affirmative steps treatment is transferred for a nonexempt purpose or is not in actual use for an exempt purpose within five years, the property appraiser shall serve a notice of intent to record a tax lien in the public records of the county against any property in the county which is owned by the organization. Furthermore, the organization owning such property is required to pay the unpaid taxes and an additional 15 percent interest per annum. The section does not provide for the assessment of penalties. As in current law, the property owner has 30 days to pay the taxes and interest, the property owner may not be assessed interest if the exemption was improperly granted due to an error or omission by the property appraiser, and the property appraiser may grant an extension on the 5-year limitation if the property owner continues to take affirmative steps to prepare the property for exempt purposes.

Subsection (2) does not apply to property that an exempt organization is preparing for use as a house of public worship.<sup>14</sup>

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

**Sections 4, 5, 6, and 7** conform cross-references relating to the removal of the affirmative steps provisions in ss. 196.196 and 196.198, F.S., and the creation of s. 196.1955, F.S.

**Section 8** provides an effective date of July 1, 2016.

### **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

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<sup>13</sup> Section 196.196(5)(b)3., F.S.

<sup>14</sup> The definition of “house of public worship” is the same as in s. 196.196(3), F.S.

reduce the authority that the municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

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 has determined that the bill will reduce local property taxes by \$1 million annually, beginning in Fiscal Year 2016-2017.<sup>15</sup>

**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 sections 196.196, 196.197, 196.1978, 196.198, 202.125, and 402.26 of the Florida Statutes.

This bill creates section 196.1955 of the Florida Statutes.

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<sup>15</sup> Revenue Estimating Conference, *Charitable Exemptions, HB 301/SB 842, 157*, (Nov. 20, 2015) available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/\\_pdf/Impact1120.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/Impact1120.pdf) (last visited Dec. 2, 2015).

**IX. Additional Information:**

**A. Committee Substitute – Statement of 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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