

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1295 Property Tax Exemptions Used by Hospitals

**SPONSOR(S):** Ways & Means Committee, Health Market Reform Subcommittee, Caruso

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	13 Y, 1 N, As CS	Royal	Crosier
2) Ways & Means Committee	10 Y, 4 N, As CS	Curry	Langston
3) Health & Human Services Committee	9 Y, 5 N	Royal	Calamas

### SUMMARY ANALYSIS

Current law permits an ad valorem tax exemption for certain property used predominately for non-profit educational, literary, scientific, religious or charitable purposes, subject to criteria established by statute.

Applicants for a religious, literary, scientific, or charitable exemption must be nonprofit entities. Hospitals, nursing homes, and homes for special services must also be a Florida non-profit corporation that is an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code.

The bill creates an additional requirement for hospitals to meet in order to qualify for a charitable tax exemption. The bill requires hospitals to document the value of charitable services they provide, and limits the charity tax exemption to the value of that charity care.

The bill has no fiscal impact on state government and is estimated by the Revenue Estimating Conference to have a positive, indeterminate revenue impact on local governments.

The bill provides an effective date of July 1, 2019.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Florida Charitable Property Tax Exemption

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>1</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>2</sup> After the local property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.<sup>3</sup> Such exemptions include, but are not limited to, exemptions for such portions of property used predominately for educational, literary, scientific, religious or charitable purposes.<sup>4</sup>

The Legislature implemented these constitutional exemptions and set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose.<sup>5</sup> Specific provisions exist for property for hospitals, nursing homes, and homes for special services;<sup>6</sup> property used for religious purposes;<sup>7</sup> educational institutions<sup>8</sup> and charter schools;<sup>9</sup> labor organization property;<sup>10</sup> nonprofit community centers;<sup>11</sup> biblical history displays;<sup>12</sup> and affordable housing.<sup>13</sup>

In determining whether the use of a property qualifies the property for an ad valorem tax exemption, 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 other qualifying entities.<sup>14</sup> Only the portions of the property used predominantly for qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt organization is used exclusively for exempt purposes, it shall be totally exempt from ad valorem taxation.

##### Charitable Organizations

Under federal law, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes.<sup>15</sup> 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.

Florida law defines a charitable purpose as a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or the service.<sup>16</sup>

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<sup>1</sup> Fla. Const., art. VII, s. 4.

<sup>2</sup> Fla. Const., art. VII, ss. 3, 4, and 6.

<sup>3</sup> s. 196.031, F.S.

<sup>4</sup> Fla. Const., art. VII, s. 3.

<sup>5</sup> ss. 196.195 and 196.196, F.S.

<sup>6</sup> s. 196.197, F.S.

<sup>7</sup> ss. 196.1975(3) and 196.196(3), F.S.

<sup>8</sup> s. 196.198, F.S.

<sup>9</sup> s. 196.1983, F.S.

<sup>10</sup> s. 196.1985, F.S.

<sup>11</sup> s. 196.1986, F.S.

<sup>12</sup> s. 196.1987, F.S.

<sup>13</sup> s. 196.196(5), F.S.

<sup>14</sup> s. 196.196(1)(a)-(b), F.S.

<sup>15</sup> 26 U.S.C. § 501(c)(3).

<sup>16</sup> s. 196.012(7), F.S.

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

Current law outlines the criteria a local property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture for the purposes of receiving an exemption.<sup>17</sup> An applicant must 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>18</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>19</sup>

Based on the information provided by the applicant, the property appraiser must determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.<sup>20</sup> In doing so, the property appraiser must consider the reasonableness of various payments, loan guarantees, contractual arrangements, management functions, capital expenditures, procurements, charges for services rendered, and other financial dealings.

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, determines the applicant to be nonprofit.<sup>21</sup>

## Additional Criteria for Hospitals, Nursing Homes, and Homes for Special Services

In addition to the above criteria, hospitals<sup>22</sup>, nursing homes<sup>23</sup> and homes for special services<sup>24</sup> must be a Florida non-profit corporations that are exempt organizations under the provisions of s. 501(c)(3) of the Internal Revenue Code.<sup>25</sup>

In determining the extent of the exemption to be granted to hospitals, nursing homes, and homes for special services, portions of the property leased as parking lots or garages operated by private enterprise are not exempt from taxation.<sup>26</sup> Property or facilities which are leased to a nonprofit corporation which provides direct medical services to patients in a nonprofit or public hospital and qualify under s. 196.196 are exempt from taxation.<sup>27</sup>

The charitable tax exemption received by hospitals currently reduces ad valorem tax revenues by approximately \$200 million annually.<sup>28</sup>

## **Federal Charity Care Reporting Requirements**

To qualify for federal tax exemption, hospitals must report their community benefit activities to the Internal Revenue Service by filing IRS Form 990 and a supplemental Schedule H form. Community benefit activities include the net, unreimbursed costs of charity care (providing free or discounted services to patients who qualify under the hospital's financial assistance policy); participation in means-

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<sup>17</sup> s. 196.195, F.S.,

<sup>18</sup> s. 196.195(1), F.S.

<sup>19</sup> s. 196.195(3), F.S.

<sup>20</sup> s. 196.195(2)(a)-(e), F.S.

<sup>21</sup> s. 196.195(4), F.S.

<sup>22</sup> s. 196.012(8), F.S., “Hospital” means an institution which possesses a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested

<sup>23</sup> s. 196.012(8), F.S., “Nursing home” or “home for special services” means an institution that possesses a valid license under chapter 400 or part I of chapter 429 on January 1 of the year for which exemption from ad valorem taxation is requested.

<sup>24</sup> Id; s. 400.801, F.S. “Home for special services” means a site licensed by AHCA prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

<sup>25</sup> s. 196.197, F.S.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Florida Department of Revenue and calculations by Ways and Means Committee staff.

tested government programs, such as Medicaid; health professions education; health services research; subsidized health services; community health improvement activities; and cash or in-kind contributions to other community groups.<sup>29</sup> Net community benefit activities do not include revenue from uncompensated care pools or programs, such as Low Income Pool (LIP) or Disproportionate Share Hospital (DSH) funds.<sup>30</sup>

### LIP and DSH Funding

The LIP program<sup>31</sup> provides government funding to safety net providers, including hospitals, for the costs of uncompensated charity care for low-income individuals who are uninsured. Uncompensated care (UC) includes charity care for the uninsured but does not include UC for insured individuals, bad debt, or Medicaid and the Children's Health Insurance Program (CHIP) shortfall. The low-income pool consists of a capped annual allotment of \$1 billion total computable for each year of the 5 year demonstration period.<sup>32</sup> Local governments, such as counties, hospital taxing districts and other state agencies provide funding for the non-federal share of the \$1 billion LIP distributions.<sup>33</sup> For the fiscal year 2018-2019, non-profit Florida hospitals received \$299,637,059 in LIP funding.

Hospitals that serve a significantly disproportionate number of low-income patients may receive DSH payments from the Centers for Medicare and Medicaid Services (CMS)<sup>34</sup> to cover the costs of providing care to uninsured patients.<sup>35</sup> Under federal law, state Medicaid programs are required to make DSH payments to qualifying hospitals that serve a large number of Medicaid and uninsured individuals.<sup>36</sup> Each year, the Florida Legislature delineates how the DSH funds will be distributed to each eligible facility through either statutory formulas or other direction in the implementing bill or proviso. For the fiscal year, 2018-2019, non-profit Florida hospitals received \$61,453,948 in DSH funds.

### Charitable Property Tax Exemptions for Hospitals in Other States

#### Utah

Utah requires a non-profit hospital to provide gifts to the community that exceed its' tax liability in order to receive a property tax exemption.<sup>37</sup> Community gifts may include indigent care, community education and service, unreimbursed care to patients covered by Medicaid, Medicare or other government programs, volunteer hours, and monetary donations, the operation of tertiary care services or other critical services or programs not otherwise available in the community, and the operation of hospitals where revenue is insufficient to cover the costs.<sup>38</sup>

#### Texas

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<sup>29</sup> James, Julia. Health Affairs, *Nonprofit Hospitals' Community Benefit Requirements* (2016), available at:

<https://www.healthaffairs.org/doi/10.1377/hpb20160225.954803/full/> (last viewed February 28, 2019); Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

<sup>30</sup> Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

<sup>31</sup> *Managed Medical Assistance Section 1115 Demonstration Waiver Authorities*, (June 8, 2018), p. 29, available at [http://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Policy/federal\\_authorities/federal\\_waivers/docs/mma/Special\\_Terms\\_and\\_Conditions\\_CMS\\_Approved\\_June\\_8\\_2018.pdf](http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/mma/Special_Terms_and_Conditions_CMS_Approved_June_8_2018.pdf).

<sup>32</sup> Florida Agency for Health Care Administration, *Low Income Pool Background*, available at:

<http://www.fdhc.state.fl.us/Medicaid/Finance/finance/LIP-DSH/LIP/background.shtml> (last viewed March 14, 2019).

<sup>33</sup> Id.

<sup>34</sup> CMS is a federal agency within the U.S. Department of Health and Human Services that administers healthcare coverage through the Medicare, Medicaid, CHIP, and the Health Insurance Marketplace.

<sup>35</sup> Health Resources and Services Administration, *Disproportionate Share Hospitals*, <https://www.hrsa.gov/opa/eligibility-and-registration/hospitals/disproportionate-share-hospitals/index.html>.

<sup>36</sup> MedicaidGov, *Medicaid Disproportionate Share Hospital (DSH) Payments*, <https://www.medicaid.gov/medicaid/finance/dsh/index.html>.

<sup>37</sup> Utah State Tax Commission, Property Tax Division, *Property Tax Exemptions, Standards of Practice 2, Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards, Appendix 2B* (May 2018) available at: <https://propertytax.utah.gov/standards/standard02.pdf> (last viewed January 18, 2019).

<sup>38</sup> Id.

Texas requires hospitals to provide a minimum level of charity care in order to qualify for a property tax exemption.<sup>39</sup> The minimum level of charity care may be calculated in one of the following ways<sup>40</sup>:

- Charity care and government-sponsored indigent health care must be provided at a level that is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;
- Charity care and government-sponsored indigent health care must be provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;
- Charity care and government-sponsored indigent health care must be provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or
- Charity care and community benefits must be provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

### Illinois

Illinois requires hospitals to demonstrate the value of charitable services it provides to address the health care needs of low-income or underserved individuals equals or exceeds the hospital's property tax liability in order to qualify for a property tax exemption.<sup>41</sup> The value of the hospital's charitable services is calculated by determining the value of the following services and activities provided by the hospital<sup>42</sup>:

- Free or discounted services;
- Support for government health programs for low-income individuals;
- Government subsidies that pay for or subsidize activities or programs related to health care for low-income or underserved individuals;
- Unreimbursed costs for the treatment of low-income patients; and
- Relief of the burden of government related to health care of low-income individuals.

### **Effect of Proposed Changes**

The bill requires hospitals to demonstrate the value of charitable services they provide by submitting a copy of their IRS Form 990 and Schedule H filings. The bill allows hospitals to qualify for a property tax exemption that is proportional to the value of charitable services they provide as reported to the IRS. The value of charitable services as reported to the IRS does not include the value of services covered by revenue from uncompensated care pools or programs such as LIP or DSH. The bill sets forth specific computations for determining the extent of the exemption. The bill requires hospitals to provide a statement signed by the hospital's CEO and a certified public accountant that the information submitted is true and correct.

The bill provides an effective date of July 1, 2019.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 196.197, F.S., relating to Additional provisions for exempting property used by hospitals, nursing homes, and homes for special services.

**Section 2:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>39</sup> See Tex. Health and Safety Code Ann. §11.1801.

<sup>40</sup> Id.

<sup>41</sup> See 35 ILCS 200/15-86(c).

<sup>42</sup> Id.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will have a positive, indeterminate impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Hospitals that currently qualify for a full property tax exemption may have a tax liability if the value of their charity care is less than the value of taxes that would apply if their property was not otherwise exempt.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Health Market Reform Subcommittee adopted an amendment that removed the word homestead from the title of the bill and reported HB 1295 favorably as amended.

On March 25, 2019, the Ways and Means Committee adopted an amendment and reported the bill favorably. The amendment makes changes to clarify the exemption calculation and application process. When calculating the hospital's estimated tax liability, the amendment requires the use of the property's value from the immediately prior year, instead of the value that the property appraiser is trying to determine in the current year, and the most recent final adopted millage rates. The amendment replaces the term "hospital owner" with the term "applicant" to clarify that the entity applying for the exemption, and providing community benefit expense information, is the 501(c)(3) owner that for whom the exemption is allowed. The amendment also changes the term "net community expense" to read "net community benefit expense" to be consistent with the rest of the bill.

The bill analysis is published to the bill as amended by the Health Market Reform Subcommittee and the Ways and Means Committee.