

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.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 1214

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Nonprofit Taxation

DATE: March 24, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1214 provides that a property's ad valorem tax exemption granted to those portions of property predominantly used for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of the property is for such charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply beginning on or after January 1, 2022.

The Revenue Estimating Conference determined that the bill will increase or decrease local government property tax revenue in any given year by an insignificant amount beginning in Fiscal Year 2022-2023.

The bill takes effect July 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.¹ The property appraiser annually determines the assessed or “just value”² of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Ad Valorem Exemption for Literary, Scientific, Religious, or Charitable Organizations

The State Constitution allows the Legislature to exempt from ad valorem taxation “such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes.”¹¹ The Legislature implements these exemptions and sets forth the criteria to determine whether property is entitled to an exemption.¹²

To determine whether a property’s use qualifies for an education, literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities or other uses of the property.¹³ The portions of the property used predominantly for qualified purposes are exempt.¹⁴

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *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).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art. VII, s. 3(a).

¹² Section 196.196, F.S.

¹³ Section 196.196(1), F.S.

¹⁴ Section 196.196(2), F.S.

Incidental use of property for an exempt purpose will not qualify the property for an exemption nor will the incidental use of the property for a non-exempt purpose impair an exemption.^{15, 16, 17}

Portions of property used for profitmaking purposes are not exempt and is subject to ad valorem taxation; however, the Legislature has allowed property to remain exempt even when used for profitmaking purposes when the use of the property does not require a business or occupational license and the revenue derived from the profitmaking activity is used wholly for exempt purposes.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 196.196(2), F.S., to clarify that the portions of property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from ad valorem taxation. The bill further provides that an ad valorem exemption is not affected so long as the predominant use of the property is for charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply on or after January 1, 2022.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Subsection (b) of section 18 of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote 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 municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an

¹⁵ Section 196.196(2), F.S.

¹⁶ *Underhill v. Edwards*, 400 So.2d 129, 132 (Fla. 5th DCA 1981). The district court found that trustees of a private not-for profit hospital were not entitled to an exemption on the new wing's first floor, which was used for a private purpose and not for a charitable purpose or other exempt purpose, despite the fact that the portion of the hospital used for a non-exempt purpose represented only a very small percentage of the otherwise exempt property.

¹⁷ *Central Baptist Church of Miami, Florida Incorporated v. Dade County, Florida, et. al.*, 216 So.2d 4, 6 (Fla 1968). The Supreme Court found that "limited part time rental of a portion of the church lot for commercial parking on weekday business hours is reasonably incidental to the primary use of the church property as a whole for church or religious purposes and is not a sufficiently divergent commercial use that eliminates the exemption as to the commercial parking lot portion of the property." at 6.

¹⁸ Section 196.196(4), F.S.

insignificant fiscal impact,^{19, 20} which for Fiscal Year 2021-2022 is forecast at approximately \$2.2 million.²¹

The Revenue Estimating Conference determined that the bill will increase or decrease local government property tax revenue in any given year by an insignificant amount beginning in Fiscal Year 2022-2023. If the actual reductions exceed \$2.2 million, the mandates provisions may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will increase or decrease local government property tax revenue in any given year by an insignificant amount beginning in Fiscal Year 2022-2023..

Also, see the conclusion in Part VI, Technical Deficiencies.

B. Private Sector Impact:

The bill appears to clarify current statutory provisions, as such, the impact is unknown at this time.

¹⁹ FLA. CONST. art. VII, s. 18(d).

²⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 03, 2021).

²¹ Based on the Demographic Estimating Conference's April 1, 2021, estimated population adopted on Nov. 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 03, 2021).

C. **Government Sector Impact:**

The bill appears to clarify current statutory provisions, as such, an impact to local governments is unknown at this time.

VI. **Technical Deficiencies:**

The phrase added by the bill stating that “an exemption is not affected so long as the predominant use of the property is for [an exempt purpose]” is ambiguous. If the phrase is administered by a property appraiser to mean that portions of property that are used for an exempt purpose continue to be exempt as long as the exempt use is the predominant use, then the phrase merely restates current law.

If, however, a property appraiser administers the provision to say that a portion of property that has been determined to be exempt can have its exemption affected by the predominate use of the property as a whole, staff estimates that the fiscal impact of the bill could change significantly.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 196.196 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Community Affairs on March 10, 2021:

The committee substitute removes the provisions of the underlying bill and provides that an ad valorem exemption for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of the property is for such exempt purpose. The committee substitute also provides that the provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

B. **Amendments:**

None.