

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 889 Nonprofit Property Tax Exemptions

**SPONSOR(S):** Ways & Means Committee, Local Administration & Veterans Affairs Subcommittee, Borrero and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee	17 Y, 0 N, As CS	Curry	Aldridge
3) State Affairs Committee	20 Y, 0 N	Darden	Williamson

### SUMMARY ANALYSIS

The Florida Constitution provides that any portion of real property used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted from taxation by general law. Property used for literary, scientific, religious, or charitable purposes is exempted from taxation based on the nature and extent it is used for 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. A property may not qualify, or be disqualified, from claiming an ad valorem tax exemption for charitable purposes based on an incidental use.

The bill provides that the portions of a property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from taxation, but that portions of a property used for charitable, religious, scientific, or literary purposes are exempt as long as the predominant use of the exempted property is for those purposes.

The provisions of the bill apply to taxable years beginning on or after January 1, 2022 and do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2021.

The Revenue Estimating Conference estimated that substantially similar provisions in CS/SB 1214 will have an insignificant positive or negative impact on local government revenues.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Property Tax

Ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts.<sup>1</sup> The tax is based on the taxable value of property as of January 1 of each year.<sup>2</sup> The property appraiser annually determines the assessed or “just value”<sup>3</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>4</sup> 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 requires all property to be assessed according to its just value, except as otherwise provided.<sup>5</sup> The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, certain types of property may be valued based on current use (classified use assessments), which often result in lower assessments. Properties receiving classified use treatment in Florida include agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for non-commercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

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

When calculating ad valorem taxes, a property’s value is reduced by any exemptions provided by law, including exemptions for educational, literary, scientific, religious, or charitable purposes.<sup>11</sup> The Legislature implements these constitutional exemptions and sets forth the criteria to determine whether property is entitled to an exemption.<sup>12</sup> These implementation provisions give property appraisers a guide when assessing or exempting property.<sup>13</sup> Ad valorem tax exemptions are strictly construed, with cases of doubt resolved against the applicant.<sup>14</sup>

In determining whether the use of a property qualifies the property for an educational, literary, scientific, religious, or charitable 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>15</sup> Only the portions of the property

---

<sup>1</sup> The Florida Constitution prohibits the state from levying ad valorem taxes. Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Both real property and tangible personal property are subject to ad valorem 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 the term “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.

<sup>3</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. Art. VII, s. 4, Fla. Const. 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: *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965).

<sup>4</sup> See s. 192.001(2) and (16), F.S. The Florida Constitution limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized. Art. VII, s. 4, Fla. Const.

<sup>5</sup> See Art. VII, s. 4, Fla. Const.

<sup>6</sup> S. 193.011(2), F.S.

<sup>7</sup> Art. VII, s. 4(a), Fla. Const.

<sup>8</sup> Art. VII, s. 4(b), Fla. Const.

<sup>9</sup> Art. VII, s. 4(e), Fla. Const.

<sup>10</sup> Art. VII, s. 4(j), Fla. Const.

<sup>11</sup> Art. VII, s. 3., Fla. Const.

<sup>12</sup> Ch. 196, F.S.

<sup>13</sup> *State ex rel. Cragor Co. v. Doss*, 150 Fla. 486, 8 So.2d 15 (1942).

<sup>14</sup> *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So.2d 176 (Fla 2d DCA 1965).

<sup>15</sup> S. 196.196(1)(a)-(b), F.S.

used predominantly for qualified purposes may be exempt from ad valorem taxation.<sup>16</sup> Property owned by an exempt organization used exclusively for exempt purposes is totally exempt from ad valorem taxation.

Incidental use of otherwise exempt property for non-exempt purposes does not make the property non-exempt.<sup>17</sup> Likewise, mere incidental educational, literary, scientific, religious, or charitable use of property does not qualify the property for the exemption. For example, a nursing home which operated as a business, collecting fees for services and increasing in value, was not granted a charitable exemption even though, incidental to business operations, they allowed some residents to pay reduced or zero fees.<sup>18</sup>

By default, property used for profitmaking purposes is subject to ad valorem taxation.<sup>19</sup> A revenue-generating use is not considered profitmaking if the activity does not require a business or occupational license and the revenue generated is used exclusively for exempt purposes.

When applying for an exemption, an applicant must provide the property appraiser with fiscal and other records showing the financial condition, record of operation, and exempt and non-exempt uses of the property.<sup>20</sup> In determining whether the property, or any portion thereof, is being used for a profitmaking purpose, the property appraiser or value adjustment board must consider the reasonableness of:

- Any advances or payments made by any person, company, or other entity controlled by the applicant to any officer, director, trustee, or stockholder of the applicant;
- Any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity controlled by such person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;
- Any contractual arrangement by the applicant (or any officer, director, trustee, member, or stockholder of the applicant) for the rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant, or other similar financial interest in the affairs of the applicant;
- Payments made for salaries for the operation of the applicant or for services, supplies and materials used by the applicant, reserves for repair, replacement, and depreciation of the property of the applicant, payment of mortgages, liens, and encumbrances upon the property of the applicant, or other purposes; and
- Charges made by the applicant for any services rendered by it in relation to the value of those services, and, if such charges exceed the value of the services rendered, whether the excess is used to pay maintenance and operational expenses in furthering its exempt purpose or to provide services to persons unable to pay for the services.<sup>21</sup>

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, determines the applicant is a non-profit entity.<sup>22</sup>

### **Effect of Proposed Changes**

The bill provides that the portions of a property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from taxation, but that portions of a property used for charitable, religious, scientific, or literary purposes are exempt as long as the predominant use of the exempted property is for those purposes.

---

<sup>16</sup> S. 196.196(2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So.2d 176 (Fla 2d DCA 1965).

<sup>19</sup> S. 196.196(4), F.S.

<sup>20</sup> S. 196.195(1), F.S.

<sup>21</sup> S. 196.195(2), F.S.

<sup>22</sup> S. 196.195(4), F.S.

The provisions of the bill apply to taxable years beginning on or after January 1, 2022, and do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2021.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 196.196, F.S., clarifying the application of an exemption from ad valorem taxation for portions of property used for charitable, religious, scientific, or literary purposes.

Section 2: Creates an undesignated section of law providing that the bill's amendments to s. 196.196, F.S., apply to taxable years beginning on or after January 1, 2022, and do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before July 1, 2021.

Section 3: Provides an effective date of July 1, 2021.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimated that substantially similar provisions in CS/SB 1214 will have an insignificant positive or negative impact on local government revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will have an indeterminate fiscal impact on the private sector, in that it may increase or reduce the number of organizations able to claim the ad valorem tax exemption for charitable, religious, scientific, or literary purposes.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2021, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided that the portions of a property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from taxation, but that portions of a property used for charitable, religious, scientific, or literary purposes are exempt as long as the predominant use of the exempted property is for those purposes.

On March 31, 2021, the Ways & Means Committee adopted an amendment and reported the bill favorably. The amendment made technical changes clarifying that an exemption for the portions of property used for charitable, religious, scientific, or literary purposes is not affected as long as the predominant use of such property is for those purposes.

The analysis is drafted to the committee substitute adopted by the Ways & Means Committee.