

STORAGE NAME: h0929.ca

DATE: March 18, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 929

RELATING TO: Ad Valorem Tax Exemption

SPONSOR(S): Representative Chestnut

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE (EDC) YEAS 9 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) FINANCE & TAXATION (FRC)
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS (FRC)
 - (5)
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I. SUMMARY:

This bill exempts from ad valorem taxation real property used as a technology-based incubation facility, if the real estate is owned and subsidized by a local government and when created, was located within an area designated as an enterprise zone. The bill also exempts from ad valorem taxation tangible property owned by a local government and used in a technology-business incubation facility. The bill provides conditions and definitions.

The bill has no fiscal impact on state government. The Revenue Estimating Conference projects a recurring (\$0.4 million) reduction in ad valorem tax revenues.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Innovation and Commercialization Centers

In response to a perceived lack of high technology infrastructure in the state, efforts were made in the early 1990s to encourage the development of high technology industries. Enterprise Florida, Inc., the state's public-private economic development corporation, was granted statutory authority to implement technology development programs. Resulting from this focus on technology development was the concept of the Innovation and Commercialization Center (ICC).

ICCs are public-private initiatives for emerging and start-up technology enterprises designed to encourage the formation of new high-growth companies with headquarters in Florida. The mission of the ICCs is to bring together technology, executives, high skill employees, industry, universities, and investment capital.

There are six ICCs located in the major geographic sectors of the state operating under the oversight of Enterprise Florida, Inc.:

- * Central Florida Innovation Corporation - Orlando
- * Enterprise Development Corporation of South Florida - Palm Beach Gardens
- * Enterprise North Florida Corporation - Jacksonville
- * Florida North Shore Technology Center - Tallahassee
- * North Florida Technology Innovation Corporation - Gainesville
- * Office for Corporate Development - Tampa

Ad Valorem Taxation

The Florida Constitution provides that counties, school districts, and municipalities must be authorized by law to levy ad valorem taxes. (Fla. Const. art. VII, § 9.) Section 196.001, F.S., subjects the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; all personal property belonging to persons residing in this state; and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority or other public body corporate of the state.

Article VII, section 2, of the Florida Constitution requires:

“All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . .”

Just Valuation

Article VII, section 4, of the Florida Constitution requires:

“By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . .”

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

Immunity and Exemptions from Ad Valorem Taxation

Immunity from Taxation

State and county government immunity from taxation is well established in Florida's jurisprudence. In *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571, 573--74 (Fla.1958), the Florida Supreme Court said that:

“property of the state and of a county . . . is Immune from taxation, and we say this despite the references to such property in (statutes) as being exempt.”

In *Alford v. State*, 107 So.2d 27, 29 (Fla.1958), the Court explained and reiterated that view.

“Although our statutes specifically exempt such State owned lands, such exemption is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government. . . .”

Governmental Purpose Exemption

Unlike state and county property, municipal property is not immune from taxation. However, municipal property is exempt from taxation under Article VII, Section 3(a) of the State Constitution.

Article VII, section 3 of the Florida Constitution provides for exemptions from ad valorem taxation. Paragraph (a) provides, in part:

“All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the

municipality, may be required by general law to make payment to the taxing unit in which the property is located. . .”

In *Canaveral Port Authority v. Department of Revenue*, 690 So.2d, 1226 (1996), the Court limited immunity from taxation, as follows:

“Accordingly, we find that only the State and those entities which are expressly recognized in the Florida Constitution as performing a function of the state comprise ‘the state’ for purposes of immunity from ad valorem taxation. What comprises ‘the state’ is thus limited to counties, entities providing the public system of education, and agencies, departments, or branches of state government that perform the administration of the state government.” (Footnotes deleted)

As a result, special district property, like municipal property, is treated under current law as exempt, rather than immune, from taxation.

Leased Government Property

The permanent owner of lease-hold property, not the lessee, is generally taxed for the full value of the property. The government will, however, tax the equitable holder of real estate, rather than the holder of bare legal title. *Bancroft Investment Corp. V. City of*, 27 So.2d 162 (Fla. 1946). A lessee holding government property can be taxed if the property is used for predominantly private purposes and not otherwise exempt. *R.R. Walden v. Hillsborough County Aviation Authority*, 375 So.2d 283 (Fla. 1979). The Legislature cannot direct the assessment of leasehold interests on any basis other than fair market value. *Schultz v. TM Florida-Ohio Realty Ltd.*, 577 So.2d 573 (Fla. 1991).

Property owned by the state or another immune entity, when leased, remains immune from taxation. *Park-N-Shop, Inc. V. Sparkman*, 99 So.2d 571 (Fla.). Leases by municipalities and other public bodies which are not immune from taxation, receive different treatment. If such an entity leases property to a tenant who performs an intrinsically public function, the property is exempt from taxation. *Hillsborough County Aviation Authority v. R.R. Walden*, 210 So.2d 193 (Fla. 1968). If, on the other hand, a municipality leases property to a tenant who uses it for predominantly private purposes, the property loses its tax exempt status, unless otherwise exempt. *City of Orlando v. Hausman*, 534 So.2d 1183 (Fla. 5th DCA 1988).

Section 196.199, F.S., provides the conditions under which property owned and used by governmental units is exempt from taxation. Paragraphs (a), (b) and (c) of subsection (1) exempt from ad valorem taxation property owned by the United States, with certain exceptions, property of the state used for governmental purposes, and all property of the political subdivisions and municipalities of the state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes, except as otherwise provided by law.

Subsection (2) of section 196.199, F.S., provides the conditions under which property owned by governmental entities, but leased to nongovernmental entities, is exempt from taxation. Paragraph (a) specifies that such property is only exempt from taxation when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in section 196.012(6). This paragraph excludes from the exemption property leased for use as a multipurpose hazardous waste treatment facility. Paragraph (b) deals with undeveloped lands and use of property for residential or commercial rentals and

provides that the leasehold or other interest shall be taxed only as intangible personal property if the rental payments are due in consideration of such leasehold or other interest. Paragraph (c) includes in the exemption any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Subsection (4) of section 196.199, F.S., provides that all property owned by a government entity which is leased to a nongovernmental lessee, except that described in paragraph (2)(a), is subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

Section 196.012(6), F.S., lists the conditions under which the use of governmental property by a lessee is deemed to be serving or performing a governmental, municipal or public purpose or function. Such purpose is demonstrated when the use could properly be performed or served by an appropriate governmental unit, or would otherwise be a valid subject for the allocation of public funds. This section specifically includes use as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration when the real property is used for the administration, operation, business offices and activities related and connected with the conduct of an aircraft full service fixed based operation and provides goods and services to the general aviation public in the promotion of air commerce. Other uses specifically included are a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach, when open to the general public with or without an admission charge.

Educational, Literary, Scientific, or Charitable Purposes Exemption

Section 3(a), Art. VII of the State Constitution allows the Legislature to exempt from property taxation ". . . such portions of property as are used predominantly for educational, literary, scientific or charitable purposes."

Chapter 196, Florida Statutes, enumerates various exemptions from real and personal property and leasehold interests in property taxation. Property must be owned by an exempt entity and used for an exempt purpose. Section 196.192(1), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used exclusively for exempt purposes. Section 196.192(2), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used predominately for exempt purposes to the extent of the ratio that such predominant use bears to the nonexempt use. Predominant use of property is defined as "use of property for exempt purposes in excess of 50 percent" but less than exclusive, which is 100 percent (s. 196.012(2) and (3), F.S.). The courts have clarified that unless the entire property is used at least predominantly for an exempt use, no portion of it qualifies for an exemption. *North Shore Medical Center, Inc. v. Bystron* 461 So.2d 167 (Fla. 3rd DCA 1984) After the property meets the predominant use test, the exemption is available only to those portions of property used for exempt purposes.

Section 196.195, F.S., provides for applicants requesting exemption as nonprofits to supply fiscal and other records showing in reasonable detail the financial condition, record of operation, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year as requested by the property appraiser or the value adjustment board. The section also provides criteria for determining profit or nonprofit status of applicants for exemptions, including:

- The reasonableness of any advances or payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for

reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;

- The reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly 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;
- The reasonableness of any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding 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;
- The reasonableness of 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
- The reasonableness of 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.

Applicant must affirmatively 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. A corporation organized as nonprofit under chapter 617 which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o) and which has a valid exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code is nonprofit. Proof provided by a corporation of such status as is sufficient to establish the organization's nonprofit status, and any corporation providing such proof is not required to provide any other information in order to establish its nonprofit status. No application for exemption may be granted for religious, literary, scientific, or charitable use of property until the applicant has been found by the property appraiser or, upon appeal, by the value adjustment board to be nonprofit as defined in this section.

Section 196.196, F.S., provides criteria for determining whether property is entitled to charitable, religious, scientific, or literary exemption. Criteria include:

- The nature and extent of the charitable, religious, scientific, or literary activity of the applicant, a comparison of such activities with all other activities of the organization, and the utilization of the property for charitable, religious, scientific, or literary activities as compared with other uses.
- The extent to which the property has been made available to groups who perform exempt purposes at a charge that is equal to or less than the cost of providing the

facilities for their use. Such rental or service shall be considered as part of the exempt purposes of the applicant.

- The extent to which the property is used to conduct activities which cause a corporation to qualify for a consumer certificate of exemption under s. 212.08(7)(o). Such activities shall be considered as part of the exempt purposes of the applicant.

Only portions of property used predominantly for charitable, religious, scientific, or literary purposes may be exempt. An incidental use of property does not qualify such property for an exemption or impair the exemption of an otherwise exempt property. Property claimed as exempt for literary, scientific, religious, or charitable purposes which is used for profitmaking purposes is subject to ad valorem taxation. Use of property for functions not requiring a business or occupational license conducted by the organization at its primary residence, the revenue of which is used wholly for exempt purposes, shall not be considered profit making.

C. EFFECT OF PROPOSED CHANGES:

This bill exempts real property owned and subsidized by a local government used as a technology-business incubation facility from ad valorem taxation if that incubation facility was located within an area designated as an enterprise zone under chapter 290, Florida Statutes, when the facility was created.

The bill also exempts any tangible property owned by a local government and used in a technology-business incubation facility.

The bill defines "technology-business incubation facility" as real property that provides business assistance and leases space at or below market rates to one or more small, fledgling, or startup businesses. The bill defines a "small, fledgling, or startup business" to include businesses that:

- * Apply new technological advancements generated through private research or research developed in association with a university, college, or industry affiliate *or* was a target industry designated under s. 288.106, F.S., upon entering a technology-based incubation facility.
- * Shows promise of increasing the percentage of gainful employment among potential members of the workforce in the county or municipality.
- * Is expected to generate a stream of products and processes having commercial application that is of importance to industry in this state.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 196.096, F.S., is created to exempt from ad valorem taxation specified real and tangible property used as or in a technology-business incubation facility under specified conditions. The section defines "small, fledgling, or startup business" and "technology-business incubation facility."

Section 2. An effective date of January 1, 2001, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no impact on state revenues.

2. Expenditures:

This bill has no impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference projects a recurring (\$0.4 million) reduction in ad valorem tax revenues.

2. Expenditures:

This bill will reduce taxes paid by local governments to the extent the bill exempts from ad valorem taxation property owned by local governments that is currently taxed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent reduced tax liabilities as passed on to private sector participants involved in ICCs, this bill could reduce costs of such entities.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Because exemptions from taxation may result in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994). The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. *Archer v. Marchall*, 355 So.2d 781 (Fla. 1978). In the event the Legislature provides an exemption without constitutional authority, the exemption may be voided as a violation of the just value requirement of Article VII, section 4, Florida Constitution.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

Florida Property Appraisers' Association

The President of the Florida Property Appraisers' Association indicates the Association opposes HB 929.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

Jill Fike Turman

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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