

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Community Affairs Committee

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BILL: CS/SJR 1344

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Property Tax Exemptions

DATE: March 14, 2006

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Herrin  | Yeatman        | CA        | Fav/CS |
| 2. | _____   | _____          | GE        | _____  |
| 3. | _____   | _____          | WM        | _____  |
| 4. | _____   | _____          | RC        | _____  |
| 5. | _____   | _____          | _____     | _____  |
| 6. | _____   | _____          | _____     | _____  |

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## I. Summary:

This committee substitute for a joint resolution exempts municipal-owned property that is used for governmental purposes from ad valorem taxation. It also authorizes the Legislature to provide an ad valorem tax exemption for property owned by a municipality that is not otherwise exempt or owned by a special district and used for an airport, seaport, or public purposes, as defined by general law, and uses incidental thereto.

The joint resolution amends Article VII, Section 3(a) of the Florida Constitution.

## II. Present Situation:

Currently, the issue of whether real property owned by a local government is subject to taxation depends on whether the property is owned by a county, municipality, or special district and the use of the property. Article VII, Section 4 of the Florida Constitution, requires a “just valuation of all property for ad valorem taxation” and provides exemptions. Real property owned by a governmental entity is typically excluded from taxation through an exemption or immunity. An exemption from taxation assumes the ability to tax.<sup>1</sup> The state and its political subdivisions enjoy an “inherent sovereign immunity” from taxation.<sup>2</sup> Florida courts have long held that counties are

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<sup>1</sup> See *Greater Orlando Aviation Auth. V. Crotty*, 775 So. 2d 978, 980 (Fla. 5th DCA 2000).

<sup>2</sup> See *Canaveral Port Auth. V. Dep’t of Revenue*, 690 So. 2d 1226, 1228 (Fla. 1996); *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571, 573 (Fla. 1957).

subdivisions of the state.<sup>3</sup> Municipalities, however, are not subdivisions of the state and are subject to taxation unless otherwise exempt.<sup>4</sup>

Article VII, Section 3(a) of the Florida Constitution, provides an exemption for ad valorem taxation for municipal-owned property that is used exclusively for a municipal or public purpose. This language was adopted as part of the 1968 revision to the Florida Constitution as a self-executing provision. Under current case law, municipal property that is leased to a private entity and used for a governmental purpose is exempt from taxation.<sup>5</sup> However, municipal property leased to a private entity for proprietary activities are not tax exempt.<sup>6</sup>

The Florida Supreme Court has concluded that special districts are not subdivisions of the state and, therefore, are not immune from taxation.<sup>7</sup> Although the courts have not addressed the tax status of all district-owned property, the courts have held that property owned by a special district and used exclusively by the district, or leased to a private entity and used for a governmental purpose, is exempt from taxation.<sup>8</sup> In this regard, Florida courts have treated property owned by a special district in a similar manner to municipal-owned property.

The November 1998 general election ballot contained a proposal from the Florida Constitution Revision Commission to amend Article VII, Section 8 of the Florida Constitution, as follows:

(a) All property owned by a municipality and used ~~exclusively by it~~ for governmental or municipal or public purposes shall be exempt from taxation. All property owned by a municipality not otherwise exempt from taxation or by a special district and used for airport, seaport, or public purposes, as defined by general law, and uses that are incidental thereto, may be exempted from taxation as provided by general law. 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. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

The ballot language addressing this proposed revision stated that it “broadens [the] tax exemption for governmental uses of municipal property; authorizes [the L]egislature to exempt certain municipal and special district property used for airport, seaport, or public purposes.” The proposed revision did not pass.

<sup>3</sup> See *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975); *Alford v. State*, 107 So. 2d 27 (Fla. 1958); *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1958); *Orlando Utilities Comm'n. v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969), *cert. denied* 237 So. 2d 539 (Fla. 1970).

<sup>4</sup> See *Greater Orlando Aviation Auth.*, 775 So. 2d at 980.

<sup>5</sup> See *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 246-48 (Fla. 2001).

<sup>6</sup> See *id.* at 248.

<sup>7</sup> See *Port of Palm Beach v. Department of Revenue*, 684 So. 2d 188 (Fla. 1996); *Canaveral Port Auth.*, 690 So. 2d at 1228. Water control districts are an exception and, as a political subdivision, are immune from ad valorem taxation. See *Andrews v. Pal-Mar Water Control Dist. Dept. of Revenue*, 388 So. 2d 4 (Fla. 4th DCA 1980).

<sup>8</sup> See *Canaveral Port Auth.*, 690 So. 2d at 1226.

**III. Effect of Proposed Changes:**

This committee substitute amends Article VII, Section 3(a) of the Florida Constitution, to broaden the ad valorem tax exemption for governmental uses of municipal property. It authorizes the Legislature to provide an ad valorem tax exemption for property owned by a municipality that is not otherwise exempt or owned by a special district and used for an airport, seaport, or public purposes, as defined by general law, and uses incidental thereto.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article XI, Section 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution if approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's Office or may be placed at a special election held for that purpose.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

When properties are exempted from taxation, the revenues for all of the taxing authorities are reduced. The fiscal impact of the exemption in this proposed constitutional amendment is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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