

STORAGE NAME: h1093s3z.ltc
DATE: April 28, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
Elder Affairs & Long Term Care
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1093

RELATING TO: Taxation of Homes for the Aged

SPONSOR(S): Committees on Finance & Taxation, Elder Affairs & Long Term Care, and Representative Crist

COMPANION BILL(S): CS/SB 0636

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

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 5 NAYS 0
- (2) COMMUNITY AFFAIRS YEAS 7 NAYS 1
- (3) FINANCE AND TAXATION YEAS 15 NAYS 0
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS (W/D)
- (5)

I. FINAL ACTION STATUS:

CS/CS/HB 1093 was substituted for CS/SB 636 and passed the Legislature on April 24, 1998, Chapter Law 98-177.

II. SUMMARY:

The bill provides that statutory provisions relating to ad valorem tax exemptions for nonprofit homes for the aged be severable, rather than nonseverable. The bill provides an ad valorem tax exemption of \$25,000 for each unit in a certified continuing care facility, occupied by a person holding a continuing care contract as defined under chapter 651, Florida Statutes, that is not now qualified for the exemption for nonprofit homes for the aged. Legislative intent provides that the newly created exemption implements Florida Constitutional provisions authorizing the Legislature to provide ad valorem tax relief to renters.

This bill has a significant fiscal impact on local government. If enacted into law, an estimated 4,605 units in certified continuing care facilities could become eligible for an exemption of \$25,000 each. This would result in a loss of \$115,125,000 to local governments' property tax base.

The bill also reduces the authority of cities and counties to raise revenue. The potential reduction by \$115,125,000 to local governments' property tax base could result in a loss of revenue-generating authority of \$2,567,287.

This bill is a mandate as provided by the Florida Constitution. To bind local governments, the bill must be enacted by a two-thirds vote of both houses of the Legislature.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Constitutional Provisions: Ad Valorem Taxation

Section 4, Article VII of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." The Constitution also provides for exemptions of property from ad valorem taxation.

Section 3 (a), Article VII of the Florida Constitution authorizes the Legislature to provide what is commonly referred to as a "charitable" exemption for property that is used predominately for educational, literary, scientific, religious, or charitable purposes. Household goods, personal effects and the property of widows, widowers, and the blind or totally and permanently disabled persons are also exempt from taxation under these provisions.

Section 6, Article VII of the Florida Constitution, authorizes a homestead exemption from ad valorem taxation for "every person who has the legal or equitable title to and maintains thereon the permanent residence of the owner, or another person legally or naturally dependent upon the owner . . ."

Subsection (e) authorizes the Legislature to establish by general law an exemption that "provides to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies."

Florida Statutes: Ad Valorem Taxation

The homestead exemption is implemented in s.196.031, Florida Statutes. Section 196.041, Florida Statutes, identifies additional persons who qualify for homestead exemption.

Nonprofit Homes for the Aged

Before 1974, nonprofit homes for the aged were granted an exemption from ad valorem taxes provided that the residents' income did not exceed a specified level. This exemption was provided under the constitutional provisions for **charities**. The law also provided a limited exemption for each unit occupied by a permanent resident, the amount of the exemption depending on whether the occupant was age 65 or older.

In *Presbyterian Homes v. Wood*, So.2nd 556 (Fla. 1974), the Florida Supreme Court found the income test for the charitable exemption to be unconstitutional, but left in place the homestead equivalent exemption for units not exempted by the income test.

The 1976 Legislature responded by adopting chapter 76-234, Laws of Florida, which created section 196.1975, Florida Statutes, and repealed the old law relating to homes for the aged. Chapter 76-234, Laws of Florida, retained the income tests for the charitable exemption and the homestead equivalent exemption for units not exempted by the income test. Legislative intent was included to address the objections raised by the Florida Supreme Court in *Presbyterian Homes v. Wood*.

In *Miller v. Board of Pensions of United Presbyterian Church*, 431 So.2d 350 (Fla., 5th DCA, 1983), the court held that the provision of s. 196.1975, F.S., which limited the exemption provided to homes for the aged to those owned by Florida non-profit corporations, was unconstitutional.

In 1987 in a case cited as *Markham v. Evangelical Covenant Church of America*, 502 So.2nd 1239 (Fla. 1987), the Florida Supreme Court again struck down the income test for a charitable exemption, but left in effect the charitable exemption and the \$25,000 exemption for apartments or units not otherwise exempted.

That same year, the Legislature enacted chapter 87-332, Laws of Florida, which provided that except for the portion of a home for the aged exempted as exclusively religious, medical, or nursing related (*charitable*), the exemptions granted in section 196.1975 implement the provisions of Section 6(e), Article VII of the Florida Constitution, relating to renter relief from ad valorem taxation.

In 1989 in the case of *Markham v. John Knox Village*, 547 So.2d 1044(Fla. 4th DCA, 1989), the courts again revisited the exemption for homes for the aged. In this case, the court held that residents of continuing care facilities holding "continual care agreements" qualified for the exemption.

Under current law, section 196.1975, Florida Statutes, provides for two types of ad valorem tax exemption for nonprofit homes for the aged:

- ▶ exemptions for charitable or religious purposes;
- ▶ and, exemptions for renters.

To receive the state ad valorem tax exemption, the home must be a nonprofit corporation exempt under section 501 (c)(3) of the Internal Revenue Code during the year the exemption is sought.

To qualify as a home for the aged, a facility must:

- ▶ ensure that at least 75 percent of the occupants are over age 62 or are totally disabled
- ▶ be licensed if it furnishes medical facilities or nursing services, or is an adult living facility

Subsection (3) of section 196.1975, Florida Statutes, provides that portions of an eligible home for the aged devoted exclusively to the conduct of religious services or the rendering of nursing or medical services are exempt from ad valorem taxation **as a charity**.

Subsection (4) of section 196.1975, Florida Statutes, provides a **homestead** exemption for other property to the extent that the residents meet the following requirements:

- ▶ a gross income of not more than \$7,200 per year and are either at least age 62 or are totally and permanently disabled;

- ▶ a couple, one of whom is at least 62 years of age or totally and permanently disabled, with a combined gross income of not more than \$8,000 per year. This category includes the surviving spouse of such a couple who was living with the deceased spouse at the time of the deceased spouse's death.
- ▶ Paragraph (b) of subsection (4) of section 196.1975, Florida Statutes, provides for the above income limits to be adjusted annually based on an average cost of living index. These income limits do not apply to totally and permanently disabled veterans.

Subsection (5) of 196.1975, Florida Statutes, exempts United States Housing and Urban Development (HUD) housing projects. Currently, an estimated 27,400 units receive this exemption.

Subsection (6) of section 196.1975, Florida Statutes, provides that social security benefits be counted as part of gross income.

Subsection (7) of section 196.1975, Florida Statutes, contains a statement of Legislative intent specifying that subsection (3) of section 196.1975, Florida Statutes, implements the ad valorem tax exemption authorized in section 3 (a), Article VII of the Florida Constitution, and the remaining subsections implement section 6(e), Article VII of the Florida Constitution, which provides for ad valorem tax relief to renters.

Subsection (8) of section 196.1975, Florida Statutes, provides that physical occupancy on January 1 is not required of homes which restrict occupancy to persons meeting the specified income limits. In a home in which 25 percent of the apartments are restricted to or occupied by persons meeting the income requirements, the common areas are exempt from taxation

Subsection (9) of 196.1975, Florida Statutes, provides a \$25,000 ad valorem tax exemption for each apartment or unit of a home for the aged not exempted in subsection (3) or (4) if the resident claims it as his or her permanent home. Currently, an estimated 22,200 units receive the exemptions (4) and (9) combined.

Subsection (10) of section 196.1975, Florida Statutes, provides that homes for the aged or life care communities which are financed with either bonds from a public entity or without such bonds are exempt from taxation only as provided in this section.

Subsection (11) of section 196.1975, Florida Statutes, provides that any property used for nonexempt purposes may be valued and placed on the tax roles apart from any portion entitled to the exemption.

Subsection (12) of section 196.1975, Florida Statutes, provides that the property appraiser shall include a proportionate share of the common areas unless those areas are exempted under subsection (8).

Nonseverability

In 1987, section 196.1976, Florida Statutes, was amended (87-332, Laws of Florida) to provide that if any provision of section 196.1975, Florida Statutes, is held to be invalid or inoperative for any reason after January 1, 1988, the remaining provisions thereof shall

be deemed void and of no effect. Prior to this act, the section provided for the provisions of section 196.1975, Florida Statutes, to be severable. This change to section 196.1976, Florida Statutes, followed a 1987 Florida Supreme Court decision in *Markham v. Evangelical Covenant Church of America*, 502 So.2nd 1239 (Fla. 1987), which struck income tests for a charitable exemption for nonprofit homes for the aged, but left in effect the exemption for property devoted to the conduct of religious services or the rendering of medical or nursing services and the \$25,000 exemption for units or apartments not otherwise exempted

Continuing Care Retirement Communities

Continuing care retirement communities, the majority of which operate on a nonprofit basis, have been regulated in Florida since 1953. Under chapter 651, the Department of Insurance regulates continuing care contracts offered by continuing care retirement communities (CCRCs).

A continuing care contract is a form of insurance product under which an individual, in exchange for a substantial one-time premium, known as an entrance fee, and monthly service fees, typically receives, for the rest of his or her life, the right to reside in a residential unit or nursing home at a continuing care retirement community, together with rights to health-related services and food service.

B. EFFECT OF PROPOSED CHANGES:

Severability

The bill provides for the provisions of s. 196.1975, Florida Statutes, relating to ad valorem tax exemptions for nonprofit homes for the aged, to be severable, rather than nonseverable. The potential effects of this change are unclear, but the bill provides clear Legislative intent that if any of the provisions of section 196.1975, Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions thereof shall not be affected and can be given effect without the invalid provision or application. The bill further provides that paragraphs (1) or (2) of s. 196.197, Florida Statutes, are to be considered severable from the whole of that section if any provision of that section is held to be invalid or inoperative for any reason.

Section 196.197, Florida Statutes, provides additional criteria to be applied when determining exemptions for hospitals, nursing homes, and homes for special services. In summary, those criteria are that the entity be a Florida corporation qualified under section 501(c)(3) of the IRS code. The section further clarifies that portions of those properties leased as parking facilities operated by private enterprise would not be considered to be serving a charitable purpose and, therefore, not eligible for tax exemption.

Tax Exemption

The primary effect of the bill is to expand current ad valorem tax relief to renters of apartments in proprietary CCRCs, as authorized by s. 6(e), Art. VII of the Florida Constitution. Currently, such relief is limited to *nonprofit* homes for the aged. Enactment of the bill would result in for-profit continuing care facilities and certain nonprofit continuing care facilities receiving the same exemption for units where the

resident holds a continuing care contract as defined under chapter 651, Florida Statutes, as is currently received by qualifying nonprofit homes for the aged for units or apartments not totally exempted from ad valorem taxation.

The bill provides an ad valorem tax exemption of \$25,000 for each unit in a continuing care facility certified under chapter 651, Florida Statutes, which facility is not qualified for exemption under section 196.1975, Florida Statutes, or similar exemption. To be eligible for the exemption, an apartment must be occupied on January 1 of the year in which exemption is requested by a person who resides therein, holds a continuing care contract as defined under Chapter 651, Florida Statutes, and in good faith makes the apartment his or her permanent home. Eligibility for the exemption is conditioned on specified procedures and requirements. The bill provides for portions of a property used for nonexempt purposes to be valued and placed upon the tax roles separately from any portion entitled to exemption.

The bill limits eligibility to apartments in a continuing care facility certified under chapter 651, Florida Statutes, occupied by persons holding continuing care contracts as defined in Chapter 651, Florida Statutes, which facility is not qualified for exemption under section 196.1975, Florida Statutes, or similar exemption. According to this language, not only are certified facilities owned by for-profit corporations eligible, but certified facilities owned by nonprofit corporations that are not qualified for any exemption under section 196.1975, Florida Statutes, or similar exemption are eligible. The bill provides that no apartment is eligible for an exemption provided by this bill if the resident of the apartment is eligible otherwise for a homestead exemption. It also limits the exemption to apartments occupied by a person who resides therein, holds a continuing care contract as defined under Chapter 651, Florida Statutes, and in good faith makes the apartment his or her permanent home. The bill provides no definition for the term apartment.

For-profit & Nonprofit

However, for-profit facilities are not required to have at least 75 percent of the occupants be over the age of 62 years or totally disabled to qualify for the exemption, as are nonprofit facilities under the current exemption.

Benefit

The bill requires the owner of the facility to disclose to each qualifying resident the full amount of the benefit derived from the exemption and credit that amount to each qualifying resident's monthly maintenance fees.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Local governments would have to adjust tax rolls to accommodate the new residences claiming homestead exemption.

- (3) any entitlement to a government service or benefit?

The bill expands to proprietary continuing care retirement communities entitlement to the homestead exemption tax benefit.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

This bill could result in a loss of \$115,125,000 to local governments' property tax base. Using the average statewide millage rate, this could result in a potential loss of revenue-generating authority for local governments of \$2,567,287.

Using the potential county and municipal millage rate of 20.0, this bill would result in a loss of \$500 per unit in revenue-generating authority for counties and municipalities.

- (2) what is the cost of such responsibility at the new level/agency?

The cost for cities and counties to implement these provisions is indeterminate at this time.

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

The bill does not directly increase taxes, but concerns have been raised that the bill could result in a significant tax burden being off set to other property owners.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

The bill reduces property taxes for applicable residential units in qualifying continuing care retirement communities.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 196.1975; 196.1976; 196.1977, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. This section amends s.196.1975, Florida Statutes and provides that the section and subsections of 196.1975 and 196.1976 Florida Statutes are severable, if any other provision is held to be invalid or inoperative for any reason.

Section 2. This section creates section 196.1977, Florida Statutes, which provides for proprietary continuing care retirement communities certified under chapter 651, homestead exemption of \$25,000 of the assessed valuation for each unit occupied by a person holding a continuing care contract as defined in Chapter 651, Florida Statutes. The bill limits this homestead exemption provision to residents who are not already eligible for homestead exemption under s. 196.1975, Florida Statutes, or other similar exemption.

Affidavits from the residents must attest that they live in the facility and consider it their permanent home. These affidavits must accompany each facility's application for the exemption. Portions of the property which are used for nonexempt purposes may be valued and put on the tax rolls apart from any part which is entitled to the exemption.

The facility owner must disclose to the residents who qualify for the exemption the full amount of the benefit derived from that exemption. The resident must receive the full benefit of the exemption in either an annual or monthly credit to the resident's monthly maintenance fee. Residents who become qualified after signing a contract will receive the same disclosure.

The bill provides Legislative intent that this section implements s. 6(e), Art. VII of the State Constitution.

Section 3. The bill provides that this act shall take effect January 1, 1998 and would apply to the 1998 tax rolls and every year thereafter.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None are anticipated.

2. Recurring Effects:

None are anticipated.

3. Long Run Effects Other Than Normal Growth:

None are anticipated.

4. Total Revenues and Expenditures:

None are anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

No non-recurring effects are projected.

2. Recurring Effects:

An estimated 4,605 units X \$25,000 exemption = loss of \$115,125,000 to local governments' property tax base. This could result in a loss of revenue-generating authority for counties, municipalities, and school districts of \$2,567,287, based on an average statewide millage rate of 22.23. The impact on counties and cities is \$1,530,011, based on statewide average city and county millage. The exact impact, however, would depend on where the affected properties are located and the extent to which local government millage rates are adjusted.

3. Long Run Effects Other Than Normal Growth:

None are projected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If enacted into law, the bill could result in an estimated tax shift of approximately three million dollars to other property owners.

2. Direct Private Sector Benefits:

The bill provides that the newly qualified exemption recipients disclose to each qualifying resident the full amount of the benefit derived from the exemption and the method for ensuring that the resident receives such benefit. The estimated annual benefit is \$556 per unit.

3. Effects on Competition, Private Enterprise and Employment Markets:

None are anticipated.

D. FISCAL COMMENTS:

This bill appears to meet the standards required in the Constitution to be considered a mandate. As such, to be binding on local governments, the bill would require a 2/3 vote in both chambers.

E. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill reduces the authority that municipalities or counties have to raise revenues in the aggregate.

An estimated 4,605 units X \$25,000 exemption = loss of \$115,125,000 to local governments' property tax base. This could result in a loss of revenue-generating authority for counties, municipalities, and school districts of \$2,567,287, based on an average statewide millage rate of 22.23. The impact on counties and cities is \$1,530,011, based on statewide average city and county millage. The exact impact, however, would depend on the location of the affected properties and the extent to which local government millage rates are adjusted.

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

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

V. COMMENTS:

The Florida League of Cities and the Association of Counties have registered significant concern about the fiscal impact of this proposal and have expressed their intent to oppose the bill as written.

The Florida Life Care Residents Association and the Florida Association of Homes for the Aging support the bill. The subject of this bill has been introduced to the Legislature since 1994. In brief, its history in the House is as follows:

1994	HB1123	Died in Committee on Finance & Taxation
1995	HB471	Died in Committee on Finance & Taxation
1996	JR69	Died in Committee on Community Affairs
1997	HB1093	Bill filed, not referred to a Committee
1998	HB 1093	Carried Over

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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