

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1998 Revised: \_\_\_\_\_

Subject: Homes for the Aged

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fournier</u>	<u>Beggs</u>	<u>WME</u>	<u>Favorable/PCS</u>
2.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
3.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
4.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**I. Summary:**

The bill provides that statutory provisions relating to ad valorem tax exemptions for nonprofit homes for the aged be severable, rather than nonseverable.

This 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, F.S., even if that facility is not now qualified for the exemption for nonprofit homes for the aging.

This bill substantially amends sections 196.1975 and 196.197, and creates section 196.1977, Florida Statutes.

**II. Present Situation:**

**Florida Constitution**

Section 4, Art. 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.

Subsection 3(a), Art. 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 blind or totally and permanently disabled persons are also exempt from taxation under these provisions.

Section 6, Art. 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 legally or naturally dependent upon the owner.”

Subsection (e) authorizes the Legislature to establish by general law an exemption that would “provide 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, F.S. Section 196.041, F.S., identifies additional persons who qualify for homestead exemption.

### **Exemptions for Hospitals, Nursing Homes, and Homes for Special Services**

Section 196.197, F.S., 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.

### **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 s. 196.1975, F.S., 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 the address the objections raised by the Florida Supreme Court in *Presbyterian Homes v. Wood*.

In 1987 in a case cited as *Markham v. Evangelical Covenant Church of America*, 502 So.2d 1239 (Fla. 1987), the Florida Supreme Court again struck 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 s. 196.1975, F.S., implement the provisions of s. 6(e), Art. VII., State Constitution, relating to renter relief from ad valorem taxation.

Under current law, s. 196.1975, F.S., provides for two types of ad valorem tax exemptions 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; and
- ▶ Be licensed if it furnishes medical facilities or nursing services, or is an adult living facility.

Subsection (3) of s. 196.1975, F.S., 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 s. 196.1975, F.S., 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; or
- ▶ 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.
- ▶ Section 196.1975(4)(a), F.S., 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 s. 196.1975, F.S., exempts United States Housing and Urban Development (HUD) housing projects.

Subsection (6) of s. 196.1975, F.S., provides that social security benefits be counted as part of gross income.

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

Subsection (8) of s. 196.1975, F.S., 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 s. 196.1975, F.S., 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 12,700 units receive the exemption.

Subsection (10) of s. 196.1975, F.S., 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 s. 196.1975, F.S., 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 s. 196.1975, F.S., provides that the property appraiser shall include a proportionate share of the common areas unless those areas are exempted under subsection (8).

### **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, F.S., 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 residence in a residential unit or nursing home at a continuing care retirement community, together with rights to health-related services and food service.

### **III. Effect of Proposed Changes:**

#### **Severability**

The bill provides for the provisions of s. 196.1975, F.S., 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 s. 196.1975, F.S., is held to be invalid or inoperative for any reason, the remaining provisions thereof shall not be invalidated. The bill further provides that subsections (1) or (2) of s. 196.197,

F.S., are to be considered severable from the whole of that section if any provision of that section is held to invalid or inoperative for any reason.

### **Tax Exemption**

The primary effect of the bill is to expand current ad valorem tax relief to renters, as authorized by s. 6(e), Art. VII, State 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 eligible units as is currently received by qualifying nonprofit continuing care facilities 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, F.S., which facility is not qualified for exemption under s. 196.1975, F.S., 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 holds a continuing care contract under chapter 651, F.S., resides therein, 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, F.S., which facility is not qualified for exemption under s. 196.1975, F.S., or similar exemption. According to this language, not only would certified facilities owned by for-profit corporations be eligible, but certified facilities owned by nonprofit corporations that are not qualified for any exemption under s. 196.1975, F.S., or similar exemption would also be eligible. The bill provides that no apartment shall be 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 holds a continuing care contract under chapter 651, F.S., resides therein, and in good faith makes the apartment his or her permanent home. The bill provides no definition for the term apartment.

### **For-profit & Nonprofit**

For-profit facilities are not required to have at least 75 percent of the occupants be over the age of 62 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 the method for ensuring that the resident receives such benefit. It also provides that the resident shall receive the full benefit derived from this exemption in either an annual or monthly credit to his or her unit's monthly maintenance fee.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill falls under s. 18(b), Art. VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding exemptions to the local property tax, the bill has the effect of reducing the revenue raising ability of local governments. The estimated county and municipality revenue loss from this committee substitute appears to be greater than \$1.4 million; therefore, the committee substitute is subject to the requirements of s. 18(b), Art. VII, State Constitution.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

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.

##### **B. Private Sector Impact:**

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. It also provides that the resident shall receive the full benefit derived from this exemption in either an annual or monthly credit to his or her unit's monthly maintenance fee. The estimated annual benefit is \$556 per unit.

##### **C. Government Sector Impact:**

No government sector impact is anticipated beyond the loss of local tax revenue.

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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