

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.)

BILL: SB 210

SPONSOR: Senators Saunders and Carlton

SUBJECT: Ad valorem tax exemption

DATE: March 19, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill clarifies provisions that provide ad valorem tax exemptions for nonprofit homes for the aged.

This bill amends section 196.1975, of the Florida Statutes.

II. Present Situation:

Exemptions from Ad Valorem Taxation

Section 4, Article VII, of the Florida Constitution requires that ~~A~~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).

Section 3 of Article VII, of the Florida Constitution, provides in part, that:

^ASuch portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.[@]

Chapter 196, F.S., implements this provision. Section 196.192, F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used *exclusively* or *predominantly* for exempt purposes. 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. 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, including charitable purposes.

Charitable purpose" is defined in s. 196.012(7), F.S., as:

"... a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal."

Section 196.195, F.S., provides guidelines for determining the profit or nonprofit status of exemption applicants. Such applicants must provide 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. Subsections (2) and (3) provide criteria for determining profit or nonprofit status of applicants for exemptions. 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 provided in this section.

Section 196.196, F.S., provides criteria for determining whether all or a portion of property is entitled to these exemptions.

Homestead and Renters Exemption

Section 6, Article VII of the State 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 @The standard homestead exemption is now \$25,000.

Section 6(e), Article VII of the State Constitution, 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."

Nonprofit Homes for the Aged - History

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*, 297 So.2nd 556 (Fla. 1974), the Florida Supreme Court found the 'income test' prescribed in s. 196.197(1), (2), and (3), F.S. (1971), too narrow in scope to conform to the true intent of the constitutional limitation, noting that general laws providing tax exemptions must contain criteria which correspond to the constitutional limitation that portions of property predominantly used for religious or charitable purposes may be exempted from taxes. The court held that the income test has reference more to the personal economics of a resident or residents of an apartment or room in a home for the aged or disabled than to the overall purpose or use of a home as a religious or charitable institution. The court found that without s. 196.197(1), (2), (3), F.S. (1971), the language of the chapter would appear to be ample criteria to be used in determining the tax exemption of a religious or charitable home for the aged pursuant to Section 3(a), Article VII, State Constitution.

The 1976 Legislature responded by adopting chapter 76-234, L.O.F., which created s. 196.1975, F.S., and repealed the old law relating to homes for the aged. Chapter 76-234, L.O.F., amended the income test by:

- c increasing the maximum income limits prescribed in the section;
- c tying these income limits to a cost-of-living index rather than future acts of Congress or future federal standards for determining the eligibility of the elderly for federal housing assistance; and
- c adding a statement of legislative intent.

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, 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. *Markham v. Evangelical Covenant Church of America*, 502 So.2nd 1239 (Fla. 1987)

That same year, the Legislature enacted chapter 87-332, L.O.F., which provided that except for the portion of a home for the aged exempted as exclusively religious, medical, or nursing related, the exemptions granted in s. 196.1975, F.S., implement the provisions of Section 6(e), Article VII of the Florida Constitution, the Renters relief@ad valorem tax exemption.

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

Nonprofit Homes for the Aged - Current Law

Section 196.1975, F.S., 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. Subsection (7) specifies that the exemption in subsection (3) implements the constitutional exemption for educational, literary, scientific, religious or charitable purposes and that the remaining subsections implement the constitutional Renters relief@exemption.

Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

- c the applicant is a nonprofit corporation or a Florida limited partnership, the sole general partner of which is a nonprofit corporation, **and** the corporation must have been exempt from federal income taxes as of January 1 of the year for which exemption from ad valorem is requested;
- c at least 75 percent of the facility occupants are over age 62 or are totally disabled; and
- c the facility is licensed if it furnishes medical facilities or nursing services, or is an adult living facility.

Section 196.1975(3), F.S., provides that those 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.

Section 196.1975(4), F.S., provides that after removing the assessed value exempted in subsection (3), homes for the aged are exempt only to the extent that residency in the home is restricted to or occupied by permanent residents (who lived in the home on January 1 of the year in which application is claimed) who meet specified age and income requirements. The income limits are adjusted annually, using an average cost of living index.

Section 196.1975(8), F.S., provides that physical occupancy on January 1 is not required of homes which restrict occupancy to persons meeting the specified income limits. Portions of such property that do not meet these requirements qualify for the alternative exemption provided in subsection (9).

Section 196.1975(9)(a), F.S., provides a \$25,000 exemption for each unit or apartment of a home for the aged not exempted under subsection (3) or (4), which is operated by a nonprofit corporation and is owned by such corporation or leased by such corporation from certain specified entities, if the property is used for the purposes for which it was organized, and is occupied, on January 1 of the year exemption is requested, by a person who makes the unit or apartment his or her permanent home.

Each home for the aged applying for this exemption must file with the annual application for exemption an affidavit from each person who occupies a unit or apartment for which an exemption is claimed, stating that the person resides therein and in good faith makes that unit or apartment his or her permanent residence.

Recent Litigation

The denial of several applications for tax exemption under s. 196.1975, F.S., by a home for the aged in Highlands County (Fairhaven) is the subject of recent litigation. In this case (Case Nos. GC 96-531; GC 97-556; & GC 98-561), in the Tenth Judicial Circuit of the State of Florida for Highlands County, counsel for the property appraiser maintained that the additional exemption authorized in s. 196.1975(4) and (9), F.S., is an additional and supplemental home for the aged exemption that is available only to an applicant who satisfies a requirement to qualify as nonprofit and charitable. The property appraiser argued that no direct renters=exemption exists, but rather, the exemption goes to the corporate institution, and cited s. 196.1975(4)(a), F.S., to support this contention:

A(4)(a) After removing the assessed value exempted in subsection (3), homes for the aged shall be exempt only to the extent that . . .@

The property appraiser contended that if the home is not found to be charitable, it is not entitled to an exemption because no other exemption exists in the Florida Constitution.

The property appraiser maintained that the only way a property appraiser can determine if a corporation is conducting a nonprofit, charitable operation is through the use of the criteria set forth in s. 196.195, F.S. With the exception of subsection (4) of s. 196.195, F.S., the property

appraiser maintained that Fairhaven had not demonstrated it was a charitable operation. Regarding subsection (4), the property appraiser argued that this provision is unconstitutional, in part, because it removes the statutory criteria in s. 196.195, F.S., which contains the financial inquiry essential for a property appraiser to determine if an applicant is truly operating as a nonprofit. Finally, the property appraiser argued that even had Fairhaven established its qualification for exemption under s.196.1975 (1)-(3), F.S., it did not prove the age and income limitations and did not establish the cost-of-living index and adjustments referenced in s.196.1975(4), F.S.

Counsel for Fairhaven argued that under s. 196.1975, F.S., a nonprofit home for the aged is exempt to the extent that it qualifies as a not-for-profit corporation under section 501(c)(3) of the Internal Revenue Code of 1954 and at least 75 percent of its residents are over the age of 62 or totally and permanently disabled. Fairhaven contended that it met the above requirements and was entitled to judgment in its favor. In essence, Fairhaven argued that when the Legislature declared in s. 196.1975(7), F.S., that it was implementing in s. 196.1975(4), (8), and (9), F.S., the renters=relief provisions of the constitution, and that the exemptions provided by those subsections need only be compatible with the limitations of that constitutional provision and not the charitable use provision of Section 3 of Article VII, of the Florida Constitution. Regarding compliance with statutory provisions, Fairhaven argued that the history of s. 196.1975, F.S., revealed that the Legislature did not intend for homes for the aged to meet the requirements of s.196.195, F.S., in order to qualify for exemption under s. 196.1975(4), (8), and (9), F.S. Fairhaven contended that the Legislature deemed obsolete, and deleted from s. 196.1975, F.S., all references to charitable purposes, with the exception of language in subsection (3).

The court ruled in favor of the property appraiser. In the final judgment [Fairhaven South, Inc., Oaks Village v. C.Raymond McIntyre, No.s 96-531, 97-556, and 98-531 (Fla. 10th Cir. Ct. April 4, 2000)], the court found:

- Section 196.195(4), F.S., as created by chapter 97-294, L.O.F., is unconstitutional in violation of article VII, section 3(a), Florida Constitution.
- Section 196.195(4), F.S., as created by chapter 97-294, L.O.F., is unconstitutional, null and void in that it operates to permit the right to tax exemption to be established at a point in time other than January 1, of the year for which exemption is sought, contrary to the implied limitation found in article VII, section 9(b), Florida Constitution, and article VII, section 4(c), Florida Constitution. It also constitutes an improper delegation of legislative authority contract to article II, section 3, and article III, section 1, Florida Constitution, in that it attempts to delegate such function to entities having no constitutional or statutory duty to assess property and administer exemptions.
- The renters exemption provided for in section 196.1975(4)(b), F.S., is an additional exemption, and to be entitled to same an applicant must first be found to be a nonprofit entity pursuant to section 196.1975(1) - (3), and section 196.195, F.S., so as to be entitled to exemption on its property in whole or in part as authorized by section 196.196, F.S.. No independent renters exemption exists under Florida law for any entity other than a nonprofit qualified home for the aged pursuant to section 196.1975(1) - (3), under section 196.1975(4)(a) or (b), F.S.

The final order has been appealed to the Second District Court of Appeal, and oral arguments are scheduled for April 10, 2001.

2000 Legislative Amendments to Sections 196.195 and 196.196, F.S.

The 2000 Legislature enacted legislation (chapter 2000-228, L.O.F.), repealing s. 196.195(4), F.S., which provided that a corporation organized as non-profit under Chapter 617 which has a valid consumer certificate of exemption under s. 212.08(7)(o), F.S., and which has an exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code must be considered nonprofit for purposes of receiving an exemption from ad valorem taxation. The act also repealed s. 196.196(1)(c), F.S., which provides that the extent to which property is used to conduct activities which cause a corporation to qualify for a consumer certificate of exemption under s. 212.08(7)(o), F.S., such activities will be considered as part of the exempt purpose of the applicant for an ad valorem tax exemption. These provisions were added to the statute in 1997 (chapter 97-294, L.O.F.)

III. Effect of Proposed Changes:

Section 1 amends s. 196.1975(1), F.S., to clarify that an applicant for exemption must be a corporation not for profit pursuant to the provisions of chapter 617, F.S., or a limited partnership, the sole general partner of which is organized as a not for profit corporation pursuant chapter 617, F.S.

Subsection (4)(a), is revised to clarify that units or apartments in homes for the aged are exempt from taxation, rather than the more general term that the homes for the aged are exempt.

Subsections (5) and (7) are amended to make stylistic changes.

Current subsection (8) provides that physical occupancy on January 1 is not required of homes that restrict occupancy to persons meeting specified income limits. The subsection also provides that "portions of such property" failing to meet those requirements shall qualify for an alternative exemption as provided in subsection (9). The subsection is amended to clarify that "portions of a property" failing to meet specified income limits shall qualify for an alternative exemption as provided in subsection (9), which is the renter's exemption pursuant to s. 196.1975 (7), F.S.

Subsection (9)(b) is amended to require each corporation, rather than home for the aged, applying for an exemption under subsection (4)(a) to file with the annual application for exemption an affidavit from each person who occupies a unit or apartment for which an exemption is claimed stating that the person resides therein and in good faith makes that unit or apartment his or her permanent residence.

A new subsection (13) is added to provide that ss. 196.195, relating to requirements for exemptions for nonprofits, and 196.196, relating to criteria for determining whether property is entitled to charitable, religious, scientific, or literary exemption, do not apply to this section.

Section 2 provides that the act will take effect upon becoming law, and the section specifies the act shall apply to the 2001 tax year and thereafter.

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

Article VII, section 18(b), of the Florida Constitution provides:

Except upon approval of each house of the Legislature by two-thirds of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

However, laws of insignificant fiscal impact (\$1.6 million) are exempt from this provision.

As discussed in the Present Situation section, recent litigation has raised questions regarding the interpretation of current statutory provisions relating to the ad valorem tax exemption for nonprofit homes for the aged. This bill addresses and attempts to resolve these questions. The Circuit Court has ruled for the Highlands County Property Appraiser. However, the case is on appeal. Consequently, it is premature to determine whether or how this bill alters the state-wide interpretation and application of current law regarding granting of exemptions for nonprofit homes for the aged, and how this bill may affect the authority of counties and municipalities to raise revenue.

Therefore, the effect of this bill on the authority of counties and municipalities to raise revenue is indeterminate. If it is determined that the provisions of this bill reduce the authority of counties and municipalities by more than \$1.6 million, then the bill will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

To the extent that previously unqualified nonprofit homes for the aged may qualify for a property tax exemption under the provisions in this bill, local government's property tax base will decrease.

B. Private Sector Impact:

To the extent that previously unqualified nonprofit homes for the aged may qualify for the exemption, they will benefit from the provisions in this bill. This reduction in the property tax base will result in a corresponding shift in property tax burden to other property owners.

C. Government Sector Impact:

This bill will provide additional guidelines for determining the tax-exempt status of nonprofit homes for the aged. There is no fiscal impact on the property appraiser's office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.