

STORAGE NAME: h1093s1.ltc
DATE: February 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1093

RELATING TO: Taxation of Homes for the Aged

SPONSOR(S): Committee on Elder Affairs & Long Term Care and Representative Crist

COMPANION BILL(S): SB 636

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

- (1) Elder Affairs & Long Term Care YEAS 5 NAYS 0
 - (2) Community Affairs
 - (3) Finance & Taxation
 - (4) Health & Human Services Appropriations
 - (5)
-

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.

The bill provides an ad valorem tax exemption of \$25,000 for each unit in a certified continuing care facility that is not now qualified for the exemption for nonprofit homes for the aging. Legislative intent is provided stating 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 6,468 units in certified continuing care facilities could become eligible for an exemption of \$25,000 each. This would result in a loss of \$161,700,000 to local governments' property tax base.

The bill also would reduce the authority of cities and counties to raise revenue. The potential reduction by \$161,700,000 to local governments' property tax base could result in a loss of revenue-generating authority of \$3,234,000.

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 within both houses of the Legislature.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Background

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 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 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.

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, 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.2nd 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 section 196.1975 implement the provisions of Section 6(e), Article VII of the Florida Constitution, relating to renter relief from ad valorem taxation.

Under 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.

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, 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 section 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;
- ▶ 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, 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 196.1975, F.S., exempts United States Housing and Urban Development (HUD) housing projects.

Subsection (6) of section 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 section 196.1975, F.S., 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, 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 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 section 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 section 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 section 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, 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.

B. 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 section 196.1975, F.S., is held to be invalid or inoperative for any reason, the remaining provisions thereof shall be deemed to be void and of no effect. The bill further provides that paragraphs (1) or (2) of s. 196.197 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 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 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, 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 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 section 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 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 section 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 section 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 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

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 the method for ensuring that the resident receives such benefit. It does not, however, require that the resident receive the cash benefit of the exemption. As a result, it is unclear what effect the bill will have on residents of units that receive the exemption.

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 \$161,700,000 to local governments' property tax base. This could result in a loss of revenue-generating authority for counties and municipalities of \$3,234,000.

Using the potential county and municipal millage rate of 20.0, this bill could 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 would reduce property taxes for persons living 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 196.1976; 196.1975; 196.1977, F.S.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

Section 1. This section amends s.196.1975. It provides that the section and subsections of 196.1975 and 196.1976 are severable if a court finds any part of it invalid or inoperable. (See discussion of these section above in *Present Situation*.)

Section 2. This section creates section 196.1977, F.S., which provides for-profit and not-for-profit continuing care retirement communities certified under chapter 651, homestead exemption of \$25,000 of the assessed valuation for each unit. The bill limits this homestead exemption provision to residents who are not already eligible for homestead exemption under s. 196.301.

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 residents who qualify for the exemption the full amount of the benefit derived from that exemption and how the facility will ensure that the residents receive such benefit.

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.

III. 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 6,468 units X \$25,000 exemption = loss of \$161,700,000 to local governments' property tax base.

This could result in a loss of revenue-generating authority for counties and municipalities of \$3,234,000.

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 \$540 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.

The Bureau of Specialty Insurers of the Division of Insurer Services of the Department of Insurance provided the following figures regarding the 19 for-profit continuing care facilities certified under chapter 651, F.S.:

# of Independent Living Units	3,896
# of Assisted Living Units	192
# of Rental Units	1,863
Total # of Units	5,951

The bill limits the new exemption to units occupied by a person who resides therein and in good faith makes the unit his or her permanent home. This analysis assumes that all 5,951 units would be eligible for the exemption.

In addition to the 19 for-profit continuing care facilities noted above, two additional facilities for which the chapter 651 license holders are nonprofit but are ineligible for exemption under 696.1975, F.S., because the real estate is owned by for-profit entities, would be eligible for the exemption provided in this bill. In those facilities there are approximately 517 eligible units.

This results in a total of 6,468 units that could be eligible for the exemption.

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:

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

C. 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.

Some persons have expressed concern that the bill does not specifically require that the financial benefit that facilities derive from this homestead exemption will be passed on to the residents in cash or a credit towards their monthly maintenance fees. Facilities presumably could choose to add a service or benefit for residents instead. Such service or benefit may be unwanted or of a lesser value than the savings the facilities received through the exemption.

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

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One technical amendment was adopted unanimously at the February 2, 1998 meeting. Since this was a carryover bill from 1997 Session, it was necessary to change the effective date from 1998 to 1999.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

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