

STORAGE NAME: h0475s1a.lt

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
ELDER AFFAIRS & LONG TERM CARE
ANALYSIS**

BILL #: CS/HB 475

RELATING TO: Fair Housing Act

SPONSOR(S): Committee on Community Affairs and Representative Greenstein

COMPANION BILL(S): SB 690 (s)

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

- (1) COMMUNITY AFFAIRS YEAS 9 NAYS 0
- (2) REAL PROPERTY AND PROBATE YEAS 8 NAYS 0
- (3) ELDER AFFAIRS & LONG TERM CARE
- (4)
- (5)

I. SUMMARY:

This bill effectively allows certain communities (homeowners' associations), which otherwise meet certain specified criteria, to qualify as "housing for older persons" under the Florida Fair Housing Act.

This bill appears to have a positive indeterminate fiscal impact or benefit to the state by indirectly assisting the state in meeting its housing needs for the elderly. This bill does not appear to have a fiscal impact on local government.

On March 30, 1999, the Committee on Real Property and Probate adopted one amendment, by Representative Greenstein, which amends Part IV, of Chapter 420, F.S., regarding housing. The amendment changed the definition of "housing for older persons" in s. 420.503, F.S., to include a project that qualifies for an exemption under the Fair Housing Act (which is what the bill amends), provided other requirements are met-- with regard to certain provisions within the Florida Housing Finance Corporation Act and with regard to prioritizing projects for Internal Revenue Code tax credits.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 760, Florida Statutes, relates to discrimination in the treatment of persons, and with minority representation. Florida's Fair Housing Act (act) is codified in part II of chapter 760, Florida Statutes.

There are several exemptions to the act, including a "housing for older persons" exemption. Communities, owners, or operators of housing that qualify for this exemption may lawfully exclude from residency families with children under 18 years of age. The act identifies three categories of housing that may qualify for the "housing for older persons" exemption:

- (1) Housing provided under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- (2) Housing intended for, and solely occupied by, persons 62 years of age or older; and
- (3) Housing intended and operated for occupancy by persons 55 years of age or older that meet the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate its intent under s. 760.29(4)(b), Florida Statutes, to maintain housing required under s. 760.29(4)(b)3., Florida Statutes.
 - c. The housing facility or community complies with certain federal rules.

s. 760.29(4)(b), F.S.

Prior to 1989, some communities' declarations of covenants restricted residency to permanent residents 16 years of age or older, with the intention of creating a community primarily for older persons. However, the federal government effectively voided such restrictions by prohibiting discrimination against families with children. Later, however, the federal law recognized the rights of older persons to establish housing for older persons. In response, the 1989 Florida Legislature amended its Fair Housing Act to prevent discrimination on "familial status,"¹ but, in concert with the federal law, provided an exemption for housing for older persons.

Nonetheless, certain "older person" communities which meet the 80 percent occupancy requirement and the federal verification requirements for the fair housing exemption, do not meet the "publishing of intent" requirement, described above, and as set forth in s. 760.29(4)(b)3.b., Florida Statutes. This is so because such documents do not expressly provide for "housing for older persons", but may express this same intent by providing for, for example, and "adult community", a "senior community", or "retirement housing facility" and/or restricting residency to persons 16 years of age or older. Generally, such "older person" communities can amend their governing documents to expressly provide for "housing for older persons". However, some "older person" communities' governing documents do not provide for amendment, prohibit amendment,

¹ Section 760.22, F.S. provides that "familial status" is established when an individual who has not attained the age of 18 years is domiciled with: (a) A parent or other person having legal custody of such individual; or (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

or authorize amendment at some future date.² These amending restrictions have unwittingly prevented such communities from qualifying for housing for older persons.

Consequently, communities originally intended for housing for older persons may eventually be phased out by because if they are not able to comply with the publishing requirement, current residents may sell their property to persons under 55 years of age in such numbers as to lose the communities' 80 percent status. Once the 80 percent status is lost for such communities, it is almost impossible to re-establish.

According to a real estate lawyer representing communities in this predicament, the City of Tamarac (in Broward County) has at least a dozen such communities facing this amendment problem. Each community contains about 250 homes.

B. EFFECT OF PROPOSED CHANGES:

This bill corrects a situation wherein certain housing facilities or communities originally intended for housing for older persons cannot qualify for consideration as housing for older persons. This bill provides that housing facilities and communities must be deemed housing for older persons intended and operated for occupancy by persons 55 years of age and older if the housing facilities or communities:

- (1) Meet the 80 percent occupancy requirement and the federal verification requirements of ss. 760.29(4)(b)3. a. and c., Florida Statutes;
- (2) Provide for an adult, senior, or retirement housing facility or community in their recorded governing document; **and**
- (3) Maintain governing documents that either (a) lack an amendatory procedure, (b) prohibit amendments, or (c) restrict amendments until a specified future date.

This bill further provides that if such governing documents prohibit residents 16 years of age or younger, that provision must be construed to apply to residents 18 years of age or younger. Such construction is necessary to conform with federal requirements and for purposes of the Fair Housing Act.

This bill requires housing facilities and communities to amend governing documents, which can be amended at a future date, within one year of such future date, and properly record such amendment. Also, the amendment must reflect the existing requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

² One community amended its declaration of covenants, pursuant to s. 617.306(1)(b), Florida Statutes, in an attempt to properly provide for "housing for older persons". Section 617.306(1)(b), F.S., provides in pertinent part: "Unless otherwise provided in the governing documents or required by law . . . any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association." The court determined that the statutory provision applies to governing documents that are silent to any amendment requirements, not to those documents that **do** "otherwise provide." The community in question's governing documents provides that amendments were restricted until a specified future date. *Westwood Community Four Association, Inc., v. Robert A. Burkell, et al.*, Case No. 98-08826 (04), 17th Judicial Circuit, Final Summary Judgment in Favor of Defendants, August 6, 1998.

(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?

No

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

This bill entitles certain communities to be designated as housing for older persons notwithstanding their governing documents' amendment limitations.

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

An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

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

No

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

No

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?

This bill allows a housing facility or community to qualify for housing for older persons, provided other conditions are met, notwithstanding the fact that its governing documents do not provide for an amendatory process, expressly prohibit amendment, or restrict amendments until a specified future date.

- 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:

This bill does not purport 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?

No

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 760.29, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 760.29, Florida Statutes, to allow certain housing facilities and communities, that otherwise meet specified criteria, to be considered housing for older persons, notwithstanding certain amendatory restrictions regarding their recorded governing documents; construes a 16 years of age or younger prohibition in certain governing documents to mean 18 years of age or younger for purposes of the Fair Housing Act, and to conform to federal requirements; and requires governing documents, which can be amended at a future date, to be amended and properly recorded within one year of that date to reflect the requirements for consideration as housing for older persons.

Section 2: Provides that the bill is effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

This bill provides opportunities for certain persons 55 years of age and older to exercise their federal and state rights to live in a community intended and established for older persons; thereby, indeterminately easing the tax burden on Florida's taxpayers to provide affordable housing to persons 55 years and older.

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

There are some affordable housing representatives who believe that older person communities compete with families for affordable housing.

D. FISCAL COMMENTS:

If these communities can qualify for housing for older persons, it assists the state in meeting its elderly housing needs. Chapter 420, Florida Statutes, establishes a program to help provide affordable housing for the elderly in Florida.

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 expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce 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 Commission on Human Relations (commission) issued a statement opposing HB 475, as introduced, because the bill provides for retroactive application. The commission also indicated that it is presently "in litigation concerning this issue." The committee substitute does not provide for retroactive application. However, the commission is waiting for a response from the federal government before taking a position on the committee substitute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 1999, the House Committee on Community Affairs adopted a remove-everything-after-the-enacting-clause amendment to HB 475 and subsequently adopted a committee substitute to the bill.

STORAGE NAME: h0475s1a.lt

DATE: April 7, 1999

PAGE 8

The amendment provides that a housing facility or community already complying with certain Fair Housing Act provisions which governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, must be considered housing for older persons intended and operated for occupancy by persons 55 years of age or older.

The amendment further provides that if the governing documents provide a prohibition against residents 16 years of age or younger, that provision must be construed, for purposes of the Fair Housing Act, to apply to residents 18 years of age and younger, in order to conform with federal law requirements. The amendment does not include a provision providing for retroactive application.

On March 30, 1999, the Committee on Real Property and Probate adopted one amendment, by Representative Greenstein, which amends Part IV, of Chapter 420, F.S., regarding housing. The amendment changed the definition of "housing for older persons" in s. 420.503, F.S., to include a project that qualifies for an exemption under the Fair Housing Act (which is what the bill amends), provided other requirements are met-- with regard to certain provisions within the Florida Housing Finance Corporation Act and with regard to prioritizing projects for Internal Revenue Code tax credits.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Navola R. Frazier

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON Real Property and Probate:

Prepared by:

J. Marleen Ahearn, Ph.D., J.D.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

Prepared by:

Melanie Meyer

Staff Director:

Tom Batchelor, Ph.D.