

STORAGE NAME: h1821a.ca

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1821

RELATING TO: Ad Valorem Tax Exemption/Homes for Aged

SPONSOR(S): Representative Crist

TIED BILL(S): None.

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
 - (2) FINANCE & TAXATION (FRC)
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill revises current statutory provisions governing exemption from ad valorem taxation for nonprofit homes for the aged. The bill specifies that the exemption applicable to homes whose residents meet specified income limitations applies to individual units or apartments of the home, and applies a residency affidavit requirement to applicants for this exemption. The bill also clarifies language with respect to qualification for an alternative exemption for portions of a home that do not meet income limitations. The bill also provides that statutory provisions providing requirements and criteria for determining the profit or nonprofit status of an applicant for ad valorem tax exemption and providing criteria for determining whether property is entitled to a charitable, religious, scientific, or literary exemption, do not apply to the exemptions for nonprofit homes for the aged.

The Revenue Estimating Conference has not yet addressed this bill. The bill appears to have an insignificant negative fiscal impact on ad valorem tax collections. Regarding the ability of counties and cities to raise revenues, recent litigation has raised questions regarding the interpretation of current statutory provisions relating to ad valorem tax exemption for nonprofit homes for the aged. This bill addresses and attempts to resolve these questions. The Final Judgement in the case before the Tenth Judicial Circuit of the State of Florida for Highlands County has not been released. As a result, it is premature to determine if this bill substantially alters current law regarding exemption for nonprofit homes for the aged and the authority of counties and municipalities to raise revenue.

The Committee on Community Affairs adopted two clarifying amendments that are traveling with the bill. The amendments are discussed in the “AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES” section of the analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Ad Valorem Taxation

Section 4, Article VII, of the Florida Constitution requires:

“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).

Educational, Literary, Scientific, Religious, or Charitable

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

“Such 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, Florida Statutes, enumerates various exemptions from real and personal property and leasehold interests in property taxation. Property must be owned by an exempt entity and used for an exempt purpose. Section 196.192(1), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used exclusively for exempt purposes. Section 196.192(2), F.S., exempts from ad valorem taxation all property owned by an exempt entity that is used predominately for exempt purposes to the extent of the ratio that such predominant use bears to the nonexempt use. 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 (s. 196.012(2) and (3), F.S.). 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 for applicants requesting exemption as nonprofits to supply fiscal and other 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 as requested by the property appraiser or the value adjustment board. The section also provides criteria for determining profit or nonprofit status of applicants for exemptions, including:

- The reasonableness of any advances or payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;
- The reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly controlled by such person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;
- The reasonableness of any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant, or other similar financial interest in the affairs of the applicant;
- The reasonableness of payments made for salaries for the operation of the applicant or for services, supplies and materials used by the applicant, reserves for repair, replacement, and depreciation of the property of the applicant, payment of mortgages, liens, and encumbrances upon the property of the applicant, or other purposes; and
- The reasonableness of charges made by the applicant for any services rendered by it in relation to the value of those services, and, if such charges exceed the value of the services rendered, whether the excess is used to pay maintenance and operational expenses in furthering its exempt purpose or to provide services to persons unable to pay for the services.

Applicants must affirmatively show that no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.

Pursuant to s. 196.195(4), F.S., a corporation organized as nonprofit under chapter 617, F.S., which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o), F.S., and which has a valid exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code is nonprofit. Proof provided by a corporation of such status as is sufficient

to establish the organization's nonprofit status, and any corporation providing such proof is not required to provide any other information in order to establish its nonprofit status. 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 defined in this section.

Section 196.196, F.S., provides criteria for determining whether property is entitled to charitable, religious, scientific, or literary exemption. Criteria include:

- The nature and extent of the charitable, religious, scientific, or literary activity of the applicant, a comparison of such activities with all other activities of the organization, and the utilization of the property for charitable, religious, scientific, or literary activities as compared with other uses.
- The extent to which the property has been made available to groups who perform exempt purposes at a charge that is equal to or less than the cost of providing the facilities for their use. Such rental or service shall be considered as part of the exempt purposes of the applicant.
- The extent to which the 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 shall be considered as part of the exempt purposes of the applicant.

Only portions of property used predominantly for charitable, religious, scientific, or literary purposes may be exempt. An incidental use of property does not qualify such property for an exemption or impair the exemption of an otherwise exempt property. Property claimed as exempt for literary, scientific, religious, or charitable purposes which is used for profitmaking purposes is subject to ad valorem taxation. Use of property for functions not requiring a business or occupational license conducted by the organization at its primary residence, the revenue of which is used wholly for exempt purposes, may not be considered profit making.

Homestead Exemption

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 . . ." The standard homestead exemption is now \$25,000.

Subsection (e) of Section 6, Article VII of the Florida 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

Background

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 1) increasing the maximum income limits prescribed in the section, 2) 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 3) 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 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, 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, 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.

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.

Section 196.1975, F.S., provides that nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

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- The applicant must be a not for profit corporation or a Florida limited partnership, the sole general partner of which is a corporation not for profit, **and** the corporation not for profit must have been exempt as of January 1 of the year for which exemption from ad valorem is requested from federal income taxation by having qualified as an exempt charitable organization under section 501 (c)(3) of the Internal Revenue Code.
- 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 s. 196.1975, 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.

Subsection (4) of s. 196.1975, F.S., provides that after removing the assessed value exempted in subsection (3), homes for the aged shall be exempt only to the extent that residency in the applicant home is restricted to or occupied by persons who have resided in the applicant home and in good faith made this state their permanent residence as of January 1 of the year in which application is claimed and who also meet one of the following requirements:

- Persons who have a gross income of not more than \$7,200 per year and who are 62 years of age or older;
- Couples, one of whom is at least 62 years of age, with a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased spouse at the time of the deceased death in the home for the aged;
- Persons who are totally and permanently disabled and who have gross incomes of not more than \$7,200 per year.
- Couples, one or both of whom are totally and permanently disabled, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased spouse at the time of the deceased death in the home for the aged;

Subsection (4) of s. 196.1975, F.S., provides that these income limitations do not apply to totally and permanently disabled veterans, provided they meet the requirements of s. 196.081, F.S.

Paragraph (b) of subsection (4) of s. 196.1975, F.S., provides for the above income limits to be adjusted annually based on an average cost of living index.

Subsection (5) of s. 196.1975, F.S., exempts United States Housing and Urban Development (HUD) housing projects from ad valorem taxation.

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

Subsection (7) of s. 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 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 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

Paragraph (a) of subsection (9) of s. 196.1975, F.S., provides that each unit or apartment of a home for the aged not exempted under subsection (3) or (4), which is operated by a not for profit corporation and is owned by such corporation or leased by such corporation from a health facilities authority pursuant to part III of chapter 154, F.S., or an industrial development authority pursuant to part III of chapter 159, F.S., which property is used by the home for the aged for the purposes for which it was organized, is exempt from all ad valorem taxation to the extent of \$25,000 of assessed valuation of such property for each apartment or unit which:

- Is used by the home for the purposes for which it was organized; and
- Is occupied, on January 1 of the year exemption is requested, by a person who resides therein and in good faith makes the same his or her permanent home.

Paragraph (b) of subsection (9) of s. 196.1975, F.S., requires each home for the aged applying for an exemption under paragraph (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.

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).

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 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 sited s. 196.1975(4)(a), F.S., to support this contention:

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

Rejecting Fairhaven's argument that a nonprofit home for the aged does not have to be charitable in order to be exempt, the property appraiser contended that if the home is not found to be charitable, it would not be entitled to exemption because none other 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) of s. 196.195, F.S., 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 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 196.1975(4), F.S.

Counsel for the home for the aged (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 judgement 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., subsection (e) of Section 6, Article VII of the Florida Constitution (renters' relief), 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 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. The Final Judgement has not been issued at this time.

C. EFFECT OF PROPOSED CHANGES:

This bill revises current statutory provisions governing exemption from ad valorem taxation for nonprofit homes for the aged. The bill specifies that the exemption applicable to homes whose residents meet specified income limitations applies to individual units or apartments of the home, and applies a residency affidavit requirement to applicants for this exemption. The bill also clarifies language with respect to qualification for an alternative exemption for portions of a home that do not meet income limitations. The bill also provides that statutory provisions providing requirements and criteria for determining the profit or nonprofit status of an applicant for ad valorem tax exemption and providing criteria for determining whether

property is entitled to a charitable, religious, scientific, or literary exemption, do not apply to the exemptions for nonprofit homes for the aged.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 196.1975, F.S., is amended to revise subsection (4)(a), to replace current language providing for homes for the aged to be exempt only to the extent residency in the applicant home meets certain requirements with language providing for units or apartments in homes for the aged to be exempt only to the extent residency in the unit or apartment meets the same requirements.

Subsection (9)(b) also is amended to require each 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. An effective date of upon becoming law is provided, and the section specifies the act shall apply to the 2000 tax year and thereafter.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no impact on state revenues.

2. Expenditures:

This bill has no impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments" section of the analysis.

2. Expenditures:

This bill has no direct impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments" section of the analysis.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not considered this bill. Advocates for the bill maintain that the only fiscal impact is in Highlands County -- \$31,000 -- since no other property appraiser has applied the same reasoning to deny an exemption for a nonprofit home for the aged. The proponents also argue that the court's judgement in the Highlands County case could be used in other counties to challenge or overturn longstanding ad valorem exemptions to nonprofit homes for the aged.

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:

As discussed in the "Present Situation" section, recent litigation has raised questions regarding the interpretation of current statutory provisions relating to ad valorem tax exemption for nonprofit homes for the aged. This bill addresses and attempts to resolve these questions. The Final Judgement in the case before the Tenth Judicial Circuit of the State of Florida for Highlands County has not been released. As a result, it is premature to determine if this bill substantially alters current law regarding exemption for nonprofit homes for the aged and the authority of counties and municipalities to raise revenue.

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs adopted two amendments on April 5, 2000, that are traveling with the bill.

Amendment 1

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On page 2, lines 1 through 10, the amendment clarifies that a not for profit home for the aged must be not for profit pursuant to the provisions of chapter 617, F.S.

Amendment 2

On page 5, line 14, the amendment replaces the word home with corporation to clarify that the not for profit corporation applies for the exemption.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith