

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 566

INTRODUCER: Community Affairs Committee and Senator Wright

SUBJECT: Ad Valorem Tax Exemption for Nonprofit Homes for the Aged

DATE: April 11, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Shuler</u>	<u>Babin</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 566 modifies the ownership structures that will allow a nonprofit home for the aged to qualify for an exemption from ad valorem taxation. Currently, the owner may be a not-for-profit corporation, or a Florida limited partnership, the sole general partner of which is a not-for-profit corporation. The bill allows the exemption for homes owned by a Florida limited partnership whose sole general partner is an entity which is wholly owned by a not-for-profit corporation and not a licensed assisted living facility, adult family-care home, or adult day care center.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See, e.g., Walter v. Schuler*, 176 So. 2d 81

within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."³ Property tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.⁴

The Florida Constitution prohibits the state from levying ad valorem taxes,⁵ and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁶

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁷ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes; land used for conservation purposes; historic properties when authorized by the county or municipality; and certain working waterfront property.⁸

Ad Valorem Tax Exemption for Homes for the Aged

Florida exempts nonprofit homes for the aged from property tax; however, the property must be owned in one of two ways: (1) owned directly by a not-for-profit corporation, or (2) owned by a Florida limited partnership whose sole general partner is a not-for-profit corporation.⁹

A qualified home for the aged is a residence where at least 75 percent of the occupants are over 62 years in age or totally and permanently disabled.¹⁰ If the home qualifies, the exemption applies to units or apartments reserved for or occupied by a permanent resident of this state who is:

- An individual with a gross income of no more than \$38,869 per year who is at least 62 years of age or is totally and permanently disabled;¹¹
- A couple with a combined gross income of no more than \$43,636 per year, or the surviving spouse of such a couple, if the surviving spouse lived with the deceased at the time of the

(Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *S. Bell Tel. & Tel. Co. v. Dade Cnty.*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ Sections 197.162 and 197.322, F.S.; see also FLA. DEP'T OF REVENUE, *Florida Property Tax Calendar* (Dec. 2016), available at: <https://floridarevenue.com/property/Documents/taxcalendar.pdf>.

⁵ FLA. CONST. art. VII, s. 1(a).

⁶ See FLA. CONST. art. VII, s. 4.

⁷ Section 193.011(2), F.S.

⁸ FLA. CONST. art. VII, s. 4.

⁹ Section 196.1975(1), F.S.

¹⁰ Section 196.1975(2), F.S.

¹¹ The original statutory income threshold of \$7,200 is adjusted annually by the percentage change in the average cost-of-living index. Section 196.1975(4), F.S.; see FLA. DEP'T OF REVENUE, *Cost of Living Adjustments* (Jan. 2023), available at: <https://floridarevenue.com/property/Documents/CostofLivingAdjust.pdf>.

deceased's death in a home for the aged, at least one of whom must be at least 62 years of age or is totally and permanently disabled;¹² or

- A totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S., regardless of income.

Common areas of the home for the aged are exempt if 25 percent or more of the units or apartments are restricted to or occupied by persons who meet the income requirements.¹³

The facility must annually file an application for exemption with the property appraiser and submit an affidavit from each person residing in a unit or apartment claiming an exemption.¹⁴

The person signing the affidavit must attest that he or she resides in the unit or apartment claiming the exemption and, in good faith, makes that unit or apartment his or her permanent residence.¹⁵

III. Effect of Proposed Changes:

The bill amends s. 196.1975, F.S., to provide that a nonprofit home for the aged owned by a Florida limited partnership, the sole general partner of which is an entity which is in turn wholly owned by a not-for-profit corporation qualifies for the associated ad valorem property tax exemption. The bill specifically excludes those facilities licensed under ch. 429, F.S., which include assisted living facilities, adult family-care homes, and adult day care centers.

The bill takes effect January 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote 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 revenue in the aggregate, as such authority existed on February 1, 1989. The mandate requirement does not apply to laws having an insignificant impact,¹⁶ which for Fiscal Year 2022-2023 is forecast at approximately \$2.3 million.¹⁷

¹² The original statutory income threshold of \$8,000 is adjusted annually by the percentage change in the average cost-of-living index. Section 196.1975(4), F.S.; see FLA. DEP'T OF REVENUE, *Cost of Living Adjustments* (Jan. 2023), available at: <https://floridarevenue.com/property/Documents/CostofLivingAdjust.pdf>.

¹³ Section 196.1975(8), F.S.

¹⁴ Section 196.1975(9)(b), F.S.

¹⁵ *Id.*

¹⁶ FLA. CONST. art. VII, s. 18(d).

¹⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, *Interim Report 2012-115: Insignificant Impact* (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

The Revenue Estimating Conference estimated that the bill provisions will reduce local impact by \$100,000 beginning in Fiscal Year 2024-2025.¹⁸ Therefore, the mandates provision likely does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the Florida Constitution requires that legislation that increases or creates taxes or fees be passed by a 2/3 vote of each chamber in a bill with no other subject. The bill does not increase or create new taxes or fees. Thus, the constitutional requirements related to new or increased taxes or fees do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference reviewed the bill language and estimated that the bill will reduce local government revenue by \$100,000 beginning in Fiscal Year 2024-2025.¹⁹

B. Private Sector Impact:

The bill will enable additional homes for the aged operated by not-for-profit corporations to qualify for the ad valorem tax exemption.

C. Government Sector Impact:

Local governments will be affected by an insignificant reduction in ad valorem property tax revenues.

VI. Technical Deficiencies:

None.

¹⁸ OFF. OF ECON. & DEMOGRAPHIC RSCH, *Revenue Estimating Conference Impact Results: Proposed Language*, 192-193 (Mar. 3, 2023), available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/_pdf/page192-197.pdf.

¹⁹ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.1975 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 29, 2023:

The CS provides that a nonprofit home for the aged owned by a Florida limited liability company which is owned by an entity licensed under ch. 429, F.S., would not be eligible for the ad valorem tax exemption.

- B. **Amendments:**

None.