NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 325 Continuing Care Retirement Homes

SHORT TITLE: Continuing Care Retirement Homes

SPONSOR(S): Senators Hoyle and Purcell

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**No General Fund Impact**				
Guilford County	**($120,347) ***	**0**	**0**	**0**	**0**
Local Governments	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County and City Governments.

EFFECTIVE DATE: Section 2 of this act is effective on and after July 1, 1998, and expires September 1, 2003. Section 3 of this act is effective when it becomes law. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1998.

*This property was included in the property tax loss when the bill passed last year.

BILL SUMMARY: The bill makes several changes to legislation enacted last year to temporarily exempt qualifying continuing care retirement communities (CCRC) from property tax. First, it eliminates a grandfather clause that may be unconstitutional. The original bill established CCRC bylaw requirements for the exemption, as the bylaws existed on August 15, 1998. The bill removes the date requirement. Second, the bill expands the qualifying governing board language. Under current law the board must be a 501(c)(3) non-profit corporation. The bill expands this definition to include 501(c)(8) and (10) associations. Third, it creates a disincentive for counties and cities to "discover" qualifying CCRCs and attempt to collect back taxes.

BACKGROUND: From a tax perspective, before April 1998, there were four categories of retirement communities in North Carolina. The first category of facilities was "charitable". These facilities were exempt from property tax because they were used exclusively for charitable

purposes and were organized as not for profit groups. A second category of homes was those exempt from property tax under G.S. 131A-21. Under this statute, homes financed by medical commission bonds are exempt from tax for the life of the bond. A third category of homes was non-profit homes affiliated with religious or Masonic organizations. They were categorized as "non-charitable religious." All "non-charitable religious" homes were exempt from property tax. A fourth group of homes was the "non-charitable, non-religious." These "non-charitable, non-religious" facilities can be either for-profit or not-for-profit. Both types of "non-charitable, non-religious" facilities were subject to local property tax.

On April 8, 1998, the North Carolina Supreme Court struck down the property tax exemption for the non-charitable religious organizations in The Appeal of Springmoor, Inc. and Ammons, Inc. The court determined that the plaintiff (Springmoor) was virtually identical to the non-charitable religious organizations receiving the exemption, with one exception: the organizations receiving the exemption were religious. The court found this to be a violation of the First Amendment's prohibition against establishing religion. As such, the court determined that all non-charitable homes for the aging, regardless of religious affiliation, should be subject to property tax. The court ruling had no impact on the charitable homes or those exempt because of medical commission bonds, and they are still exempt from property tax.

The 1998 Session of the General Assembly passed legislation granting a temporary property tax exemption to qualifying CCRCs. The nine point criteria was used in an attempt to grant this exemption to the same CCRCs that were exempt before the Springmoor decision. It also instructed the Legislative Research Commission to conduct a comprehensive study of the property tax exemptions for non-profit institutions, and make a final report to the 2000 regular session of the legislature.

ASSUMPTIONS AND METHODOLOGY: The bill has two potential revenue impacts. In 1998 the General Assembly developed a nine point criteria that CCRC's must meet to receive the temporary property tax exemption. The criteria are as follows:

1. its grounds and buildings are at a single site, and
2. it is designed for elderly residents, and
3. it has independent living facilities, and
4. it has either:
    A) skilled nursing facilities or
    B) adult care facilities, and
5. it is exempt from corporate income tax, and
6. its net revenues are applied to providing uncompensated goods and services to the elderly and the local community, and
7. it is a 501(c)3 organization, and
8. it has an active fundraising program that subsidizes those in financial need, and
9. a majority of its board of directors or trustees is selected by a publicly supported 501(c)3 organization that is
    A) organized for charitable purposes, and
    B) is not a private foundation.

At that time attorney's associated with the North Carolina Association of Non-Profit Homes for the Aging (NCANPHA) assured legislative staff that these requirements would allow all CCRCs

that were previously exempt to claim a temporary exemption from property tax. However, NCANPHA and some county assessors now believe that at least one of the communities the Legislature intended to exempt is now subject to property tax. This organization is currently subject to the tax because they do not meet the qualifications set out in nine (9) above. The Masonic and Eastern Star Home in Guilford County is not governed by a non-profit organization. A non-profit fraternal association oversees it.

By expanding the language to include CCRCs that are governed by non-profit corporations and associations, defined as a 501(c)(3), (8), and (10) organizations, the bill effectively grants a temporary property tax exemption to the Masonic and Easter Star Home. According to the Guilford County Assessor's office, the Masonic and Eastern Star home holds property valued at $9,867,000. The tax currently associated with this property is $120,347*.

The second potential impact is a result of Section Two. Under current law , counties and cities can "discover" property that is subject to tax and collect current and back taxes on the property. Penality can also be assessed. Section Two of the bill authorizes the Secretary of Revenue to reduce a county or city's intangibles tax reimbursement from the state if they "discover" property that should be temporarily exempt under G.S. 105-278.6A (the CCRC provision). The intangibles tax allocation reduction must be equal to 110% of the taxes collected on discovered qualifying CCRC property. This creates a disincentive for counties or municipalities to "discover" and collect taxes on qualifying CCRC activity. While three counties have indicated to either Fiscal Research or a CCRC their interest in collecting back taxes on "discovered" CCRC property, this is not a representative sample. Further, because this property can be "discovered" at any time, Fiscal Research can not accurately predict when and if counties would "discover" these properties without the bill. Therefore, no reliable fiscal estimate is possible on this portion of the bill.

FISCAL RESEARCH DIVISION 733-4910
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DATE: Thursday, April 22, 1999

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