

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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**BILL:** CS/SB 568

**INTRODUCER:** Community Affairs Committee; and Senators Diaz and Pizzo

**SUBJECT:** Assessment of Property

**DATE:** March 12, 2019

**REVISED:** \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Toman   | Yeatman        | CA        | <b>Fav/CS</b> |
| 2. |         |                | FT        |               |
| 3. |         |                | AP        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 568 authorizes a county or municipality to enter into restrictive covenant agreements with owners of property providing affordable housing. A restrictive covenant is deemed a land use regulation for the life of the covenant. A restrictive covenant would run with the land for at least 20 years, it is amendable, and it may include resale restrictions. By December 1 of each calendar year, a county or municipality must provide to the property appraiser a list of all recorded covenant agreements. The property appraiser is required to consider covenants within the context of factors used to arrive at just value.

The bill also allows, at the discretion of the property appraiser, for currently assessed property to qualify for the tangible personal property exemption without the filing of an initial return.

**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.<sup>1</sup> The property appraiser annually determines the assessed or “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

### **Just Valuation**

Section 193.011, F.S., requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm’s length;
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any executive order, ordinance, regulation, resolution, or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;
- Location of the property;
- Quantity or size of the property;
- Cost of the property and the present replacement value of any improvements thereon;
- Condition of the property;
- Income from the property; and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.<sup>4</sup>

The Florida Supreme Court has held that “the appraisal of real estate is an art, not a science,”<sup>5</sup> and “the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty.”<sup>6</sup> In *Lanier v. Walt Disney World Company*, the court held that property appraisers are not obliged, under the law, to give each factor equal weight, provided each factor is first carefully considered and such weight is given to a factor as the facts justify.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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 *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> See ss 193.011(1)-193.011(8), F.S.

<sup>5</sup> *Powell v. Kelley*, 223 So. 2d 305, 309 (Fla. 1969).

<sup>6</sup> *District School Board of Lee County v. Askew*, 278 So. 2d 272, 276 (Fla. 1973).

<sup>7</sup> *Lanier v. Walt Disney World Company*, 316 So. 2d 59, 62 (Fla. 4 DCA 1975); *certiorari denied* 330 So. 2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876)

While the just valuation standard generally requires the property appraiser to consider the highest and best use of property, 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;<sup>8</sup> land used for conservation purposes;<sup>9</sup> historic properties when authorized by the county or municipality;<sup>10</sup> and certain working waterfront property.<sup>11</sup>

### **Affordable Housing in Florida**

As a public corporation<sup>12</sup> and the state's lead affordable housing entity, Florida Housing Finance Corporation (Florida Housing) utilizes federal and state resources to finance the development and preservation of affordable homeowner and rental housing and assist eligible homebuyers with financing and down payment assistance. To fulfill its mission, Florida Housing partners with a number of non-state entities including private lenders and investors, mortgage and bond insurers, federal agencies, for profit and nonprofit developers and property managers, and local governments.

Affordable housing for Florida Housing programs is defined in terms of the income of the household living in the housing. Housing is generally said to be affordable when a family is spending no more than 30 percent of its income on housing.<sup>13</sup> On the rental side, this includes utilities, while on the homeownership side, principal, interest, taxes, and insurance are all part of the equation.<sup>14</sup>

Resident eligibility for Florida Housing programs is governed by area median income (AMI) levels.<sup>15</sup> AMI eligibility levels for many programs is provided for in s. 420.0004, F.S., based on the county or group of counties in which a property is located as well as family size.<sup>16</sup> Generally speaking:

- Extremely low-income means total household income up to 30 percent of AMI;<sup>17</sup>
- Very low-income means total household income from 30.01 to 50 percent of AMI;<sup>18</sup>
- Low-income means total household income from 50.01 to 80 percent of AMI;<sup>19</sup> and
- Moderate income means total household income from 80.01 to 120 percent of AMI.<sup>20</sup>

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<sup>8</sup> FLA. CONST. art. VII, s. 4(a).

<sup>9</sup> FLA. CONST. art. VII, s. 4(b).

<sup>10</sup> FLA. CONST. art. VII, s. 4(e).

<sup>11</sup> FLA. CONST. art. VII, s. 4(j).

<sup>12</sup> Chapter 97-167, Laws of Fla., created Florida Housing as a public-private entity to replace the Florida Housing Finance Agency for the ostensible purposes of reducing bureaucracy and streamlining administrative processes.

<sup>13</sup> Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation* (November 2018) (on file with the Senate Committee on Community Affairs).

<sup>14</sup> *Id.*

<sup>15</sup> AMI data is determined annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.

<sup>16</sup> *See supra* note 13.

<sup>17</sup> *See* s. 420.0004(9), F.S.

<sup>18</sup> *See* s. 420.0004(17), F.S.

<sup>19</sup> *See* s. 420.0004(11), F.S.

<sup>20</sup> *See* s. 420.0004(12), F.S.

AMI affordability parameters for “workforce housing” in the state are set at slightly higher household income levels. As used in the Community Workforce Housing Innovation Pilot Program (CWHIP) under s. 420.5095, F.S., workforce housing means housing affordable to natural persons or families whose total annual household income does not exceed 140 percent of AMI, adjusted for household size, or 150 percent of AMI, adjusted for household size, in areas of critical state concern.<sup>21</sup> The critical state concern is designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.<sup>22</sup>

Florida Housing’s programs feature a variety of financing resources to developers of affordable housing including federal Low Income Housing Tax Credits (LIHTC)<sup>23</sup> and loans provided through the State Apartment Incentive Loan (SAIL)<sup>24</sup> Program. To receive financing, developments must meet certain tests that restrict both the amount of rent charged to tenants and the income of eligible tenants.

### **Property Taxation of Affordable Housing**

The Florida Constitution provides no exception to the just value standard for assessment of property in affordable housing programs. Section 196.1978(1), F.S., provides a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption. The property must be owned entirely by a not-for-profit corporation and provide affordable housing to serve extremely-low-income, very-low-income, or low-income persons.<sup>25</sup> Section 196.1978(2), F.S., provides that certain, qualifying multifamily affordable housing projects may receive a 50 percent discount from the amount of ad valorem tax owed after the 15<sup>th</sup> completed year of a recorded affordable housing agreement with Florida Housing.

In assessing property used for affordable housing in the LIHTC Program, s. 193.017, F.S., provides that:

- Neither the tax credits nor the financing generated by the tax credits may be considered income to the property;
- The actual rental income from rent-restricted units must be recognized by the property appraiser; and
- If an extended low-income housing agreement is filed in the official public records of the county, the agreement, and any recorded amendment or supplement, shall be considered a

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<sup>21</sup> Section 380.0552, F.S., designates the Florida Keys as an area of critical state concern, and includes legislative intent to provide affordable housing in close proximity to places of employment in the Florida Keys. Section 380.0555, F.S., provides a like designation and affordable housing legislative intent to the Apalachicola Bay Area.

<sup>22</sup> Section 420.5095(1)(a), F.S. Per the subsection, the intent to provide affordable housing also applies to areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation.

<sup>23</sup> See Tax Reform Act of 1986 (P.L. 99-514) and s. 420.5099, F.S. Federal tax credits are sold to investors to be used for a dollar-for-dollar reduction in their federal tax liability in exchange for equity to finance the acquisition, rehabilitation and/or new construction of affordable rental housing.

<sup>24</sup> Section 420.5087, F.S. SAIL provides gap financing to developers through non-amortizing, low-interest loans to leverage mortgage revenue bonds or federal LIHTC resources and obtain the full financing needed to construct affordable rental units for very low-income families.

<sup>25</sup> The not-for-profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code.

land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.<sup>26</sup>

### **Restrictive Covenants Running with the Land**

In general, a restrictive covenant is a written agreement that limits the use of property for specific purposes and regulates the structures that may be built on it.<sup>27</sup> A covenant is said to “run with the land” when not only the original parties or their representatives but each successive owner of the land will be entitled to its benefit or be liable (as the case may be) to its obligation.<sup>28</sup>

### **Florida Housing Land Use Restrictive Agreements<sup>29</sup>**

Rental property developers who receive financing from Florida Housing must agree to enter a Land Use Restrictive Agreement (LURA) which subjects the rental property to certain limitations in exchange for preferable financing. The land use restrictions are documented in the LURA and recorded in the public record. Recording the LURA means its restrictions run with the land, so that if the property is sold during the term of the agreement, then the buyer must also abide by the terms of the LURA.

### **Ad Valorem Exemption for Tangible Personal Property**

“Tangible personal property” means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>30</sup> All tangible personal property is subject to ad valorem taxation unless expressly exempted.<sup>31</sup> Household goods and personal effects,<sup>32</sup> items of inventory,<sup>33</sup> and up to \$25,000 of assessed value for each tangible personal property tax return<sup>34</sup> are exempt from ad valorem taxation.

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.<sup>35</sup> Property owners who lease, lend, or rent property must also file a return. Each tangible personal property

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<sup>26</sup> See ss. 420.5093(5)-(6) and 420.5099(5)-(6), F.S., for conforming provisions of this guidance within programs for the allocation of State Housing Tax Credits and LIHTCs both of which are administered by Florida Housing. Section 193.018, F.S., on the assessment of community trust land for affordable housing provides that ground leases recorded in a county which restrict how parcels may be sold are deemed as land use regulations during the term of the lease.

<sup>27</sup> See BLACK’S LAW DICTIONARY (6<sup>th</sup> ed. 1990).

<sup>28</sup> *Id.* Section 193.505(1)(b), F.S., allows for a covenant “running with the land” for a term of not less than 10 years with the governing body of the county in which the property is located that the property shall not be used for any purpose inconsistent with historic preservation or the historic qualities of the property.

<sup>29</sup> See final bill analysis for HB 7109 (2017 Regular Session) by the Florida House of Representatives (Jun. 5, 2017) 20-21, available at <http://www.flsenate.gov/Session/Bill/2017/7109/Analyses/h7109z1.WMC.PDF> (last visited Mar. 1, 2019).

<sup>30</sup> s. 192.001(11)(d), F.S.

<sup>31</sup> s. 196.001(1), F.S.

<sup>32</sup> s. 196.181, F.S.

<sup>33</sup> s. 196.185, F.S.

<sup>34</sup> s. 196.183, F.S.

<sup>35</sup> s. 193.062, F.S.; see also DOR, Tangible Personal Property, <http://dor.myflorida.com/dor/property/tpp/> (last visited Feb. 15, 2018).

tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value.<sup>36</sup>

A single return must be filed for each site in the county where the owner of tangible personal property transacts business. Section 196.183(4), F.S., states that owners of property previously assessed by a property appraiser without a return being filed may qualify for the tangible personal property exemption without filing an initial return. This qualification is at the discretion of the property appraiser. The exemption for tangible personal property does not apply in any year a taxpayer fails to timely file a return that is not waived.<sup>37</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 193.019, F.S., to establish provisions for the assessment of property subject to certain restrictive covenants. A county or municipality is permitted to enter into an agreement with a property owner and file a restrictive covenant with the clerk of court running with the land for at least 20 years. The covenant will state that the property will be used to provide affordable housing to statutorily-defined low-income persons or workforce housing and may contain resale restrictions. A property owner and a county or municipality may amend the restrictive covenant if the amended covenant does not significantly change the intention of the original restrictive covenant.

The restrictive covenant must be recorded in the public records of the county and each county or municipality must provide the property appraiser with lists of all agreements entered into for the calendar year by December 1 of the year prior to the year in which each revised assessment takes effect.

In addition to the factors found in s. 193.011, F.S., for determining just value, property appraisers are to consider properties with a restrictive covenant in conformation with the covenant terms including any amendments or changes to a covenant. A restrictive covenant and any amendments are to be recorded in the official records of the county and is considered a land use regulation during the life of the covenant.

**Section 2** amends s. 196.183, F.S., to allow a property owner who fails to file an initial tangible personal property tax return and whose property is assessed by the property appraiser without a tax return to receive the \$25,000 exemption for *any year* of assessment, including the first year. The decision whether or not to apply an exemption when a tax return is not filed remains at the discretion of the property appraiser. Under current law, a property appraiser may not apply the exemption to the *first year* in which a tax return was due but not filed, but may apply it to subsequent years.

**Section 3** provides an effective date of July 1, 2019.

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<sup>36</sup> Fla. Const. art. VII, s. 3.

<sup>37</sup> Section 196.183(5), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

The Revenue Estimating Conference has determined section 2 of the bill will reduce local property tax revenues by \$3.2 million beginning in Fiscal Year 2019-2020, with a \$3.2 million recurring, negative impact. The \$3.2 million reduction includes a school tax reduction of \$1.2 million and a non-school tax reduction of \$2 million. This estimate assumes that every property appraiser would choose to grant the exemption authorized in section 2 of the bill.<sup>38</sup>

## B. Private Sector Impact:

A property appraiser's consideration of an affordable housing restrictive covenant for just valuation purposes may work to limit such valuations for the property owners (Section 1). Certain filers for tangible personal property exemptions may qualify for an exemption for any year of assessment without filing an initial tax return (Section 2).

## C. Government Sector Impact:

The Department of Revenue would need to amend Florida Administrative Code Rules 12D-7.019 on tangible personal property exemptions and 12D-8.007 on preparation of assessment roles.

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<sup>38</sup> Office of Economic and Demographic Research, The Florida Legislature, Revenue Estimating Conference: Revenue Impact Results HB 443, 57-62 (Feb. 7, 2019) available at: [http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/\\_pdf/Impact0215.pdf](http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0215.pdf) (last visiting March 8, 2019).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 193.019 of the Florida Statutes.

This bill amends section 196.183 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 12, 2019:**

- Specifies that a county or municipality may enter into the bill's restrictive covenants.
- Clarifies that restrictive covenants entered into are pursuant to the bill's newly created section of law.

**B. Amendments:**

None.