

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Finance and Tax Committee

BILL: CS/SB 1022

INTRODUCER: Finance and Tax Committee and Senator Haridopolos

SUBJECT: Affordable Housing

DATE: April 17, 2007

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

|    | ANALYST         | STAFF DIRECTOR  | REFERENCE | ACTION        |
|----|-----------------|-----------------|-----------|---------------|
| 1. | <u>Fournier</u> | <u>Johansen</u> | <u>FT</u> | <u>Fav/CS</u> |
| 2. | _____           | _____           | <u>GA</u> | _____         |
| 3. | _____           | _____           | <u>RC</u> | _____         |
| 4. | _____           | _____           | _____     | _____         |
| 5. | _____           | _____           | _____     | _____         |
| 6. | _____           | _____           | _____     | _____         |

**I. Summary:**

The committee substitute provides that certain affordable housing properties must be assessed on the basis of their actual rental income.

The committee substitute amends s. 193.017, Florida Statutes, and creates s. 193.018, Florida Statutes.

**II. Present Situation:**

**Florida Housing Finance Corporation**

The Florida Housing Finance Corporation (corporation), formerly the Florida Housing Finance Agency, is the primary state entity responsible for encouraging the construction of affordable housing in Florida. The corporation was created in 1997 when the Legislature implemented chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs in Florida by reconstituting the agency as the corporation. The corporation is a public corporation housed within the Department of Community Affairs (DCA), and is a separate budget entity not subject to control, supervision, or direction by the DCA. The corporation is governed by a board of directors comprised of the Secretary of DCA serving as an ex officio voting member, and eight members appointed by the Governor subject to confirmation by the Senate.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program which annually provides low-interest loans on a competitive basis to affordable housing developers,
- The Florida Homeowner Assistance Program which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program,
- The Florida Affordable Housing Guarantee Program which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds,
- The State Housing Initiatives Partnership Program which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing, and
- The Community Workforce Housing Innovation Pilot Program which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance and build workforce housing.

Affordable housing programs are funded from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and then used for the various corporation programs. The 2005 Legislature capped the distribution of documentary stamp tax revenues effective July 1, 2007, and in the 2007-2008 fiscal year, the State Housing Trust Fund is eligible to receive a maximum of \$243 million.

### **Affordable Housing Income Requirements**

Income requirements for affordable housing are established in s. 420.0004, F.S., as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount up for lower income counties, and down for higher income counties.<sup>1</sup>
- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state, or does not exceed 50 percent of the median annual adjusted gross income for households within a metropolitan statistical area (a core area containing a substantial population nucleus.)
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state, or does not exceed 80 percent of the median annual adjusted gross income for households within a metropolitan statistical area.
- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households, or 120 percent of the median annual adjusted gross income for households within a metropolitan statistical area.

Under the State Housing Initiatives Partnership Program, the median annual household income for very-low income, low-income, and moderate income persons or families may increase to an

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<sup>1</sup>The Florida Housing Data Clearinghouse at the Shimberg Center, University of Florida, reports that Florida has more than 1 million households that qualify as extremely-low-income households.

amount not to exceed 140 percent of the income requirement caps when persons or families live in a rental unit.

Proposals being heard in the Legislature this year propose that for purposes of providing workforce housing under the CWHIP program, annual income caps for persons or families are 140 percent of the area median income, adjusted for size, and 150 percent of the area median income, adjusted for size, in areas which once were designated or are now designated areas of critical state concern for which the Legislature has declared its intent to provide affordable housing.

**2005 Gap Between Buying Power and Median Sales Price by County for Homesteaded Single Family Homes under the Community Workforce Housing Innovative**

The Shimberg Center at the University of Florida is responsible for developing and maintaining the statewide data on housing needs and production and operating an information clearinghouse on housing program. The Center also coordinates state housing initiatives with local government and federal programs. The following information is from the Shimberg Center and is compiled using county property appraiser data provided by the Department Revenue:

| <b>County</b>       | <b>Median Annual Income for a Family of Four</b> | <b>Buying Power (Income x 3)</b> | <b>Median Sales Price</b> | <b>Gap Between Buying Power and Sales Price</b> |
|---------------------|--|----------------------------------|---------------------------|---|
| <b>Broward</b>      | <b>\$ 58,100</b>                                 | <b>\$ 174,300</b>                | <b>\$ 330,000</b>         | <b>\$ 155,700</b>                               |
| <b>Hillsborough</b> | <b>\$ 52,150</b>                                 | <b>\$ 156,450</b>                | <b>\$ 230,000</b>         | <b>\$ 73,550</b>                                |
| <b>Monroe</b>       | <b>\$ 58,450</b>                                 | <b>\$ 175,350</b>                | <b>\$ 660,000</b>         | <b>\$ 484,650</b>                               |
| <b>Palm Beach</b>   | <b>\$ 62,100</b>                                 | <b>\$ 186,300</b>                | <b>\$ 396,800</b>         | <b>\$ 210,500</b>                               |
| <b>St. Lucie</b>    | <b>\$ 52,450</b>                                 | <b>\$ 157,350</b>                | <b>\$ 237,000</b>         | <b>\$ 79,650</b>                                |
| <b>Seminole</b>     | <b>\$ 55,100</b>                                 | <b>\$ 165,300</b>                | <b>\$ 260,000</b>         | <b>\$ 94,700</b>                                |
| <b>Walton</b>       | <b>\$ 44,000</b>                                 | <b>\$ 132,000</b>                | <b>\$ 320,000</b>         | <b>\$ 188,000</b>                               |

**Low-Income Housing Tax Credit Program**

Sections 193.017 and 420.5099, F.S., provide that for purposes of implementing the Low-Income Housing Tax Credit Program and in assessing for ad valorem taxation under just valuation requirements, neither the tax credits or the financing generated by the tax credits, shall be considered income to the property, and the actual rental income from rent-restricted units shall be recognized by the property appraiser. In addition, any extended low income housing

agreement and all amendments to the agreements that are recorded and filed in the official public records of the county where the property is located are deemed a land use regulation during the term of the agreements and any amendments thereto.

***Holly Ridge Limited Partnership, Appellant v Pritchard, et al, Appellees (936 So.2d 694)***

The Holly Ridge Limited Partnership owns 120 senior rental apartments in Putnam County which were built with tax credit financing under the Low Income Housing Tax Credit program administered by the corporation. This federal program was created in 1986 to encourage the private sector to develop affordable housing projects. Under the federal program, each state receives an annual allocation of low income housing tax credits which equate to a dollar-for-dollar federal tax liability reduction taken over a 10-year period.

The tax credits are awarded on a competitive basis and are used as a financing mechanism for the developer to pay most of the project construction costs. The credits are sold by the developer to a banking institution at a discount, generally about 80 cents per dollar, and the banker becomes a limited partner in the development. Once the project is constructed, the bank is eligible to use the tax credits one year at a time, and after ten years, the credits are exhausted.

In the Holly Ridge development, the developer received \$8 million in tax credits and sold them to the bank for \$6.4 million. As a condition of receiving the tax credits, the developer placed the property under a Land Use Restriction Agreement which restricted the use of the property for 50 years. Part of the agreement requires set-asides in the development based on income restrictions under which the tenants may not be charged more than 30 percent of their maximum monthly income as rent. The property can only be used for rental apartments.

Holly Ridge sued the Putnam County property appraiser over unfavorable ad valorem tax assessments for the years 2002 and 2003. The trial court found in favor of the property appraiser, and Holly Ridge appealed. In August of 2006, the Fifth District Court of Appeals determined that the property appraiser failed to comply with state law (s. 420.5099, F.S.) in determining just valuation when he factored in the impact of tax credits to derive a capitalization rate, instead of using a market capitalization rate, and he derived an unreasonably low capitalization rate. The District Court reversed the trial court's judgment and remanded the case for a new trial. The Florida Supreme Court denied review.

**Section 4, Article VII, State Constitution**

Section 4, Article VII, of the State Constitution, requires that all property be assessed at just value for ad valorem taxing purposes. The Florida Supreme Court has construed "just value" to be "fair market value" and "fair market value" to be the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell. Certain exceptions to just value assessment, such as the "Save Our Homes" limitation and the exception for agricultural land, are constitutionally authorized.

**Section 193.011, F.S.**

Section 193.011, F.S., requires that property appraisers consider 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, excluding reasonable fees and purchase costs, in an arm's length transaction,
- The 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 certain factors such as judicial limitations, or local or state land use regulations,
- The location of the property,
- The quantity or size of the property,
- The cost of the property and the present replacement value for improvements on the property,
- The condition of the property,
- The income from the property, and
- The net proceeds from the sale of the property after deducting the usual and reasonable fees and costs of sale.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 193.017, F.S., to clarify that properties which have received a low-income housing tax credit from the Florida Housing Finance corporation must be assessed under s. 193.011, F.S., using an income approach, consistent with s. 420.5099, F.S., and applying the following assumptions:

- The tax credits granted and the financing generated by the tax credits can not be considered as income.
- The actual rental income from rent-restricted units in each property must be recognized by the property appraiser as real rents for assessing just value.
- Any costs paid for by tax credits and by additional financing proceeds received under ch. 420 can not be included in the valuation of the property.

If an extended low-income housing agreement is filed in the official public records of the county where an affordable housing project serving persons or families meeting income level requirements is located, the agreement and any recorded amendment or supplement must be considered as land use regulations and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

**Section 2** creates s. 193.018, F.S., to provide that for the purpose of assessing the just valuation of property under s. 193.011, F.S., which is subject to a land use agreement or other agreement restricting the use of the property to affordable housing for at least 20 years and that is recorded in the official public records of the county where the property is located, the property appraiser shall use an income approach based on the actual rental income from rent-restricted units for the following properties:

- Properties that are funded and rent-restricted by the United States Housing & Urban Development's Section 8 program, and used to provide affordable housing for the elderly, extremely-low-income persons, and very-low income persons. The housing project must have undergone financial restructuring as provided in s. 501, Title V, Subtitle A of the Multifamily Assist Housing Reform and Affordability Act of 1997, which requires execution of a use agreement to maintain the property as affordable housing for a period of 30 years
- Multifamily, farm worker, or elderly rental properties that are funded and rent restricted by the Florida Housing Finance Corporation under the State Apartment Incentive Loan Program, the HOME Investment Partnership Program, the Community Workforce Housing Innovation Pilot Program, the State Housing Initiatives Partnership Program, the HOME Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act, or the Federal Home Loan Banks' Affordable Housing Program.
- Multifamily residential rental properties of 10 or more units that are certified as being deed restricted by a public local housing finance agency as having 100 percent the units dedicated to providing affordable housing for persons or families at all income level requirements.

**Section 3** provides that the committee substitute shall take effect July 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The committee substitute appears to reduce the authority of municipalities and counties to raise revenues in the aggregate, as such authority existed on February 1, 1989. Therefore, if committee substitute becomes a bill, the bill may be subject to the requirements of section 18, Article VII, of the State Constitution, and could require a two-thirds vote of the membership of each house of the Legislature.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Section 4, Art. VII of the State Constitution requires that all property must be assessed at just value except for those classes of property for which the Constitution provides another

assessment standard. Prior to the *Holly Ridge* opinion, cited above, attempts to provide for other standards by statute have been struck down by the courts in several cases.<sup>2</sup>

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

To the extent that committee substitute reduces the assessed value of affordable housing projects, property taxes paid by owners of these projects will be lower.

B. Private Sector Impact:

To the extent that committee substitute reduces the assessed value of affordable housing projects, property taxes paid by owners of these projects will be lower.

C. Government Sector Impact:

The Revenue Estimating Conference has determined that this committee substitute has an indeterminate negative impact on local revenue statewide. It could result in decreasing the value of taxable property up to \$4.3 billion, or approximately \$80 million in ad valorem taxes at current millage. Because the current practice with respect to assessment of this property is unclear, and actual rental rates of the properties subject to the new assessment provision are not known the actual revenue impact cannot be determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>2</sup> Valencia Center, Inc. v. Bystrom 543 So.2d 214 (Fla. 1989) and Interlachen Lakes Estates, Inc. v. Snyder 302 So. 2d 433 (Fla. 1973)





## **VIII. Summary of Amendments:**

None.

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