

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1151 Ad Valorem Taxation of Property Used to Provide Affordable Housing
SPONSOR(S): Government Efficiency & Accountability Council and Fitzgerald
TIED BILLS: **IDEN./SIM. BILLS:** SB 2320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>7 Y, 0 N</u>	<u>Levin</u>	<u>Williamson</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>12 Y, 0 N, As CS</u>	<u>Levin</u>	<u>Cooper</u>
3) <u>Policy & Budget Council</u>	<u>(W/D)</u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Internal Revenue Code designates qualifying organizations providing low income housing as charitable and allows such organizations an exemption from federal income tax. The exemption is based on the rationale that low-income housing organizations offer relief to poor and distressed persons.

The bill addresses the issue of affordable housing in Florida by creating a definition for community land trust. The ownership of the land in these trusts must be vested in a non-profit entity that is qualified as a charitable organization exempt from federal taxation pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended. The charitable organization is permitted to construct structural improvements (homes) on the land and then convey the property to a qualified person or persons, subject to a 99 year ground lease.

The community land trust retains the option to repurchase the structural improvements at a price that is determined by a formula designed to ensure that the home remains affordable to individuals who meet certain gross income limitations for households within the state.

The land within a community land trust is exempt from ad valorem taxation; the present cash value of the structures built upon that land is restricted to an amount determined by the formula found in the ground lease.

There is no fiscal impact on state funds. There may be a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill may reduce the just valuation of homesteads constructed within a community land trust.

Promote personal responsibility – The decrease in just valuation should reduce the monthly costs of living in a dwelling within a community land trust.

Empower families – The restrictions on the resale price of homesteads, which are contained within the individual ground leases, will make these homes in community land trusts affordable in the future to families who might otherwise be unable to purchase a home.

B. EFFECT OF PROPOSED CHANGES:

Current situation: Low-income Housing Property Exemption

Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, designates qualifying organizations providing low income housing as charitable and allows such organizations an exemption from federal income tax. The exemption is based on rationale that low-income housing organizations offer relief to poor and distressed persons as defined by Rev. Proc. 96-32, 1996-1 C.B. 717.

Chapter 196, F.S., enumerates various exemptions from real and personal property and leasehold interests in property taxation. Section 196.1978, F.S., contains an ad valorem tax exemption for property used to provide housing under any state housing programs authorized under chapter 420, F.S., or other similar local or federal housing program, and owned entirely by a nonprofit corporation which qualifies as charitable under s. 501(c)(3) of the Internal Revenue Service of 1986, as amended. The property is considered property owned by an exempt entity and used for a charitable purpose.

Effect of Bill

The bill addresses the issue of affordable housing in Florida by creating a definition for community land trusts.

CS/HB 1151 will permit community land trusts to purchase property and hold it in perpetuity for the primary purpose of providing affordable homeownership. Community land trusts may construct structural improvements (homes) on the lands for persons and families who meet the income limitations contained within s. 420.0004, F.S., for extremely-low-income persons,¹ very-low income persons,² low-income persons,³ and moderate-income persons.⁴ The purchase of the home will be subject to a 99 year ground lease.

¹ "Extremely-low-income persons" means one or more natural persons or a family whose total annual household 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 annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

² "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

³ "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median

The price at which second and subsequent conveyances of the property occur will be limited by a formula that is designed to ensure that the improvements remain affordable to persons within the applicable income groups. For the purpose of ad valorem assessments, the present cash value of the property under s. 193.011 (1), F.S., will be limited to the amount determined by the formula in the ground lease. No ad valorem taxation will be assessed upon the land owned by a community land trust and held in perpetuity for the purpose of providing affordable housing.

C. SECTION DIRECTORY:

Section 1 creates s. 193.018, F.S., which permits community land trusts to acquire property and construct homes for individuals and families meeting certain income limitations. It also limits the price at which the property may be reconveyed.

Section 2 amends s. 196.1978, F.S., to permit property owned by community land trusts to receive exemption from ad valorem taxation.

Section 3 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The amount of land subject to ad valorem taxes may decrease. This may limit the revenues of taxing authorities who levy ad valorem tax.

2. Expenditures:

If community land trusts develop areas which did not previously require certain governmental services, the local government may experience an increased demand for its services and an increase in expenditures associated with the provision of those services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

⁴ "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

This bill has not been evaluated by the Revenue Estimating Impact Conference. The fiscal impact will be dependent upon the number and size of community land trusts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

At present, no fiscal impact has been established for the bill. If the bill is determined to reduce the ability of cities and counties to raise revenues over the levels which existed on February 1, 1989, then the bill may constitute a mandate.

2. Other:

Article VII, section 3(a) of the Florida Constitution provides an exemption from ad valorem taxation for the portions of property used predominantly for educational, literary, scientific, religious or charitable purposes, as provided by general law. Section 196.1978, F.S., establishes that the use of property owned by a 501(c) (3) nonprofit entity to provide affordable housing constitutes use for a charitable purpose. This section permits affordable housing to be exempt from ad valorem taxation to the extent provided in s. 196.196, F.S.

Article VII, section 4 of the Florida Constitution requires just valuation of all property for ad valorem taxation. Constitutional exceptions to the just valuation requirement are afforded to agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes.⁵ Counties and municipalities also are authorized to assess historic property on the basis of character of use.⁶ Reductions in assessed value for homesteads also is authorized for construction or reconstruction undertaken to provide living quarters for parents or grandparents of the home owner or home owner's spouse.⁷ There is no specific constitutional authorization for a reduction in the valuation of a structure based on restrictions in the subsequent sale price based on a formula contained in the ground lease.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

I would like to clarify that this bill provides a definition of community land trusts, but does not create them, as is stated in this analysis. Additionally, the analysis indicates that this bill may have a negative impact on the revenues of local governments. It should be noted that the impetus for the creation of community land trusts has been local governments' desire to be fiscally responsible and protect their investments in affordable workforce housing. State and local governments are already providing subsidies for affordable housing. The community land trust arrangement simply ensures that this public investment will go toward providing affordable housing in perpetuity.

The lack of affordable housing is one of the greatest challenges facing Florida's families today. In an effort to protect public investment and create a permanent stock of affordable workforce housing, local governments are donating land, or the money to purchase land, to charitable, tax exempt housing

⁵ Article VII, section 4(a), *Florida Constitution*.

⁶ Article VII, section 4(d), *Florida Constitution*.

⁷ Article VII, section 4(e), *Florida Constitution*.

organizations known as community land trusts. The community land trust deeds the home, but not the land, to an income-eligible buyer. The purchase price of the home is made affordable to the homebuyer, in large part because the buyer is not paying for the land. The homeowner will receive a 99 year ground lease interest in the land and pay a nominal monthly fee to the community land trust for the use of the land.

The interest in using community land trusts to create a permanent stock of affordable workforce housing in Florida is substantial. To date, there are 17 community land trusts that have been formed and another 16 under consideration. If the community land trust homeowner is taxed on the value of the land and structure or even the structure alone at its value without regard to the resale restriction, the homeowner will be paying taxes on a value that substantially exceeds the value of the home to the homeowner. The purpose of the state, local government, and the community land trust in encouraging and maintaining the creation of a permanent stock of affordable housing for low income families will be frustrated, as families will be unable to afford the property tax bill.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Government Efficiency & Accountability Council adopted one amendment which clarified that each home and the real property it is located upon will have a separate, specific legal description. This analysis has been updated to reflect this change.