

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 Community Affairs Committee

BILL: CS/SB 1490

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Property Tax Exemptions/Affordable Housing

DATE: March 27, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Molloy | Yeatman | CA | Fav/CS |
| 2. | | | FT | |
| 3. | | | GA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) provides for the assessment of structural improvements, condominium parcels, or cooperative parcels owned by a community land trust (CLT) which are subject to a long-term ground lease and limited to providing affordable housing for certain income-qualified families and individuals. When determining just valuation, the property appraiser must assess the property using the ground lease restrictions limiting the use or resale of the improvements, and the ground lease restrictions which limit the use of vacant property owned by the CLT for the purpose of providing affordable housing.

The CS provides that property owned by certain nonprofit entities or Florida-based limited partnerships and used or held for the purpose of providing affordable housing to certain income-qualified families or persons is exempt from ad valorem taxation. The exemption is extended to land owned by an exempt entity and subject to a long-term lease for use as affordable housing, and to undeveloped property owned by an exempt entity which has taken affirmative steps to prepare the property for future use as affordable housing. The CS establishes conditions under which such an exemption may be revoked.

The CS substantially amends s. 196.1978 and creates s. 193.018, Florida Statutes.

II. Present Situation:

Community Land Trusts - In an effort to create permanent affordable homeownership opportunities for Florida's workforce, local governments are donating land, or the money to purchase land, to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust sells 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 receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

According to the Revenue Estimating Conference, as of 2007 there are 17 community land trusts in Florida that are operational or in the incorporation stage, and 13 more under discussion. In Monroe County, the Middle Keys Community Land Trust allows improvements to appreciate by the lesser of 3 percent per year or the rate of annual growth in median income in the Keys.

Affordable and Workforce Housing Income Requirements - Income requirements for affordable housing and workforce housing are established in ss. 420.0004 and 420.5095, F.S., respectively, 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.
- 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.
- 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.
- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.

Charitable Organizations - Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Affordable Housing Property Exemptions - The Florida Constitution provides no exception to the just value standard for assessment of property in affordable housing programs. Under s. 193.017, F.S., in assessing property in the Low-Income Housing Tax Credit Program, neither the tax credits nor the financing generated by the tax credits may be considered income to the property, and the actual rental income from rent-restricted units may be recognized by the

property appraiser. Under s. 196.1978, F.S., property that provides affordable housing for income-eligible individuals and families and owned entirely by a charitable nonprofit entity under federal criteria, is considered property owned by an exempt entity for charitable purposes making it eligible for an ad valorem tax exemption to the extent authorized in s. 196.196, F.S. In 2007, the Legislature enacted chapter 2007-198, Laws of Florida, authorizing a county or municipality to adopt an ordinance to allow for the deferral of property taxes and non-ad valorem assessments if the owners of the property are operating, rehabilitating, or renovating affordable rental housing property. The use of the property as affordable housing must be maintained over the deferral period or the total amount of deferred assessments, taxes and interest becomes due and payable on November 1 of the year in which the use of the property was changed.

Property entitled to charitable, religious or other exemptions - Under s. 196.196, F.S., when determining if the use of the property qualifies the property for an ad valorem tax exemption, the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities. The rental of the property to other qualified entities at a charge that is equal to or less than the cost of the qualified entity having its own facility is not considered a profit-making purpose and does not affect the exempt purposes of the owning organization. Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

With regard to property used for religious purposes, the property may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. "Affirmative steps" means environmental or land use permitting activities, creation of architectural or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to a religious use as a house of public worship.

III. **Effect of Proposed Changes:**

Section 1 creates s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing. The CS defines "community land trust" as a nonprofit entity that qualifies as a charitable entity under s. 501(c)(3) of the Internal Revenue Code and which has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable housing.

The CS codifies in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

The CS provides that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Section 2 amends s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 420.0004, F.S.¹ The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation. The not-for-profit corporation must qualify as charitable under section 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717.² The CS provides that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

The CS provides that the ad valorem tax exemption is extended to land that is owned by an exempt entity and subject to a 99-year ground lease for the purpose of providing affordable housing. In addition, the exemption is provided to undeveloped property owned by an exempt entity that takes affirmative steps to prepare the property to provide affordable housing to persons meeting certain affordable housing income-restrictions in s. 159.603(7), F.S.³ and the extremely-low, very-low, low and moderate income restrictions in s. 420.0004, F.S.

The CS defines "affirmative steps" as demonstrating to the property appraiser that activities have been initiated which will ensure the future use of the property as affordable housing. These activities include, but are not limited to, proposals for property development, preliminary environmental or land use permitting activities, site plans, architectural plans, site preparation, construction or renovation activities, financial plans, or any other activities which demonstrate to the property appraiser that the property will be used to provide affordable housing. If affirmative steps have not been taken within 5 years after the exemption is granted, the property appraiser may rescind or reject the exempt status of the property, and reassess it based on other uses.

Section 3 provides that the act shall take effect upon becoming a law.

¹ Section 196.1978, F.S., currently provides an exemption for property that is owned by nonprofit charitable organizations and used for the purpose of providing affordable housing.

² Revenue Procedure Low-Income Housing Guidelines as published by the Internal Revenue Service to provide guidance on qualifying for the 501(c)(3) tax exemption for organizations that provide low-income housing.

³ Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The CS reduces the authority that municipalities and counties have to raise revenues in the aggregate but the level of reduction is unclear. If the fiscal impact of the CS rises above the level determined to be "insignificant,"⁴ the bill must pass with 2/3 vote of the membership of each house of the Legislature, as required in s. 18, Art. VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Florida residents may see an increase in affordable housing properties and units available for sale or rental from the provisions of the bill.

C. Government Sector Impact:

On February 15, 2008, the Revenue Estimating Conference adopted a consensus estimate on provisions of the CS relating to property owned by an exempt entity that has taken affirmative steps to prepare the property to provide affordable housing. The conference estimated an annual recurring loss in ad valorem revenue to local governments of \$400,000 per year by identifying \$19.58 million in taxable property owned by Habitat for Humanity, assuming a 3 percent CPI growth rate, and applying an average millage rate of 16.8 percent. This estimate applies to ad valorem taxes levied by counties, cities and school districts.

On February 29, 2008, the Revenue Estimating Conference adopted a consensus indeterminate negative impact to local government from the provisions of the CS relating to community land trust property used to provide affordable housing.

On April 21, 2007, the Revenue Estimating Conference adopted a consensus estimate on provisions of the CS that apply to the exemption for limited partnerships. The conference

⁴ Defined as a fiscal impact of 10 cents or less per capita per year. Florida's estimated population on April 1, 2007, was 18.68 million people so a fiscal impact of more than \$1.9 million in the aggregate is a significant fiscal impact.

adopted a low estimate of \$1.9 million in the first year to \$2.2 million in the fifth year. However, this estimate applies to ad valorem taxes levied by counties, cities and school districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Committee on March 27, 2008:

The CS adds provisions relating to the assessment of structural improvements and improved parcels of property conveyed by a CLT and subject to a ground lease of at least 99 years, and the assessment of land owned by a CLT when the land is subject to a ground lease of at least 99 years. Revisions are made to provisions in the original bill applying to property owned by an exempt entity qualifying as a charitable organization under the Internal Revenue Code when the entity takes affirmative steps to commit the future use of the property for affordable housing. The affordable housing property tax exemption is expanded to include property owned by a qualifying nonprofit entity if the property will be used for affordable housing purposes.

- B. **Amendments:**

None.