

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 431                      Affordable Housing  
**SPONSOR(S):** Fitzgerald & others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 796

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u>9 Y, 0 N</u>	<u>Rojas</u>	<u>Croom</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u></u>	<u>Rojas</u>	<u>Tinker</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill is a substantial rewording of s.193.017, F.S., revising provisions that address assessment of property used for affordable housing which has received a low-income housing tax credit. The new language sets forth special assessment for determining just valuation of qualifying properties held by community land trusts.

The bill revises the assessment of resale-restricted homes built on community land trust property so that they are not valued as though they were subject to free market purchase and sale prices, thereby reducing the assessment and property tax rate on those properties

**Note: A strike-all amendment was adopted for HB 431. Please see Section IV for a summary of the strike-all.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure lower taxes** – The bill reduces the property assessments for structural improvements within a community land trust by assuring that resale-restricted homes built on community land trust property are not valued as though they were subject to free market purchase and sale prices, thereby reducing the property tax rate on those improvements.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current situation:**

Section 193.011, F.S., lists factors that should be considered in deriving just valuation. These include present cash value of the property, highest and best use, location, size and condition of the property and cost and the net proceeds of the sale of the property but must take into consideration any applicable limitations, including local or state land use regulation.

Section 193.017, F.S., provides that when properties used for affordable housing receive a low-income housing tax credit from the Florida Housing Finance Corporation (FHFC), that the properties shall be assessed consistent with s. 193.011, F.S. The provisions require that tax credits and financing generated may not be considered as income to the property, that costs paid by tax credits or additional financing proceeds under Chapter 420 F.S., may not be included in the valuation of the property, and that rental income from rent-restricted units be recognized by the property appraiser. Furthermore, if an extended low-income housing agreement is properly filed it shall be considered a land-use regulation and limitation on the highest and best use of the property. Section 193.017(1)-(3), F.S., contains identical language to the provisions of s. 193.803(6)(b)1-3, F.S., and is unnecessary in its current form.

The language of s.193.017(4), F.S. relates to the decision in Holly Ridge v. Pritchett, 936 So.2d 694 (Fla. 5th DCA 2006), "Statutory requirement that county not consider tax credits to owners of apartment houses under the Low Income Housing Tax Credit program as income for purposes of assessment of property taxes did not contravene constitutional requirement for "just valuation" of property for tax purposes, given that property was subject to restrictions that constitute land use regulations, and legislature deemed the tax credits as intangible personal property that was exempt from local taxation." This decision is codified in s. 420.507(46), F.S.

Special assessment of homes located on a community land trust was addressed in Section 19 of HB 1B during the June 2007 special legislative session. The pertinent language addressing community land trusts<sup>1</sup> was passed as part of HB 1B (s. 19, ch. 2007-321), but the enactment of section 19 was tied to the passage of the amendment that was approved for placement on the ballot during the same special session (s. 34, ch. 2007-321). Subsequently, the amendment was removed from the ballot by the Florida Supreme Court<sup>2</sup>, and was not included in the Property Tax reforms approved during the January 29, 2008 special election.

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<sup>1</sup> Section 19, beginning on line 1235, and section 34, beginning on line 1910.

<sup>2</sup> No. SC04-942.

## **Effect of Bill**

This bill will replace the current language in s. 193.017, F.S. The replacement will have no effect on the special assessments of properties used for affordable housing that receive a low-income housing tax credit from the Florida Housing Finance Corporation (FHFC). The deleted provisions are addressed in s.193.803(6)(b) and in s. 420.507(46).

The bill defines that land subject to special assessment under this statute be held by community land trusts operating as nonprofit entities that are qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes to purchase property and hold it in perpetuity for the primary purpose of providing affordable homeownership for persons and families subject to specified income limitations.<sup>3</sup> The community land trust can convey, to these specified persons, structural improvements (homes) located on specific parcels of land to provide affordable housing. The statute also requires that conveyance be subject to a ground lease of at least 99 years. The trust shall retain the preemptive option to purchase any structural improvements on the land at a price determined in the ground lease.

The bill directs that the just valuation of the assessment be arrived at under s.193.011, F.S., which holds that the property appraiser shall take into consideration the present cash value of the property, which is the amount a willing purchaser would pay a willing seller and the highest and best use to which a property can be expected to be put in the immediate future and present use of the property, taking into consideration the limitations of local and state land use regulation.

The bill further directs that the ground lease and all amendments, supplements, or memorandum documenting how such a lease restricts the price at which improvements may be sold, when properly recorded, shall be deemed a land use regulation during the term of the lease.

This would create an environment where resale-restricted homes built on community land trust property are not assessed as though they were subject to free market purchase and sale prices, thereby reducing the property tax rate on those improvements.

### **C. SECTION DIRECTORY:**

**Section 1:** Substantially rewords s.193.017, F.S., replacing provisions providing for the assessment of property receiving low-income housing tax credit and providing factors for arriving at just valuation of property within community land trusts.

**Section 2:** Provides an effective date of July 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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<sup>3</sup> Income limitations can be found in s.420.0004, F.S. and s. 420.5095(3), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

There will be a decrease in revenue for local governments because a reduction of assessment rates will reduce the property tax rate on those homes that qualify within a community land trust. The Revenue Estimating Impact Conference has estimated an indeterminate minor impact as a result of this bill.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will reduce the cost of living in a dwelling within a community land trust by reducing the property tax on those homes.

**D. FISCAL COMMENTS:**

The Revenue Estimating Impact Conference reports that there are approximately 17 community land trusts in Florida that are operational or in the incorporation stage, and a potential of an additional 13 that could qualify under the bill. The impact is expected to be minor due to the limited number of properties.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill may be a mandate requiring a two-thirds vote of the membership of each house. On its face, the bill may reduce the authority that counties and municipalities have to raise revenue due to the tax provisions related to assessing just valuation of qualifying properties and assessing improvements used for affordable housing as subject to a 99-year ground lease. However, the impact is expected to be minor due to the limited number of properties that would qualify.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

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 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, 24 community land trusts have been formed and another 10 are in exploratory stages. 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 20, 2008, a strike-all amendment was adopted by the Economic Development Committee, and the bill was reported favorably.

The amendment changes the following:

- Creates a new section of statute, s. 193.018, F.S., rather than replacing the current language of s. 193.017, F.S.
- Adds a paragraph addressing that when arriving at the just valuation of the underlying land of the community land trust, that the amount a willing purchaser would pay a willing seller for the land is limited to an amount commensurate with the terms of the ground lease, which includes the restrictions of the use of the land to be included for consideration.
- Includes condominium parcels or cooperative parcels when addressing structural improvements on community land trust property.