

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 443 Assessment of Property
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Darden	Miller
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution reserves to local governments the authority to levy ad valorem taxes on real and tangible personal property. Ad valorem taxes are levied annually by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year. The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes, and provides for specified assessment limitations, property classifications, and exemptions.

The calculation of just value requires the consideration of a variety of factors, including present cash value, the highest and best use of the property, current use of the property, location, size, cost, condition, income generated by the property, and the net proceeds in event of sale. Properties used for affordable housing receiving a low-income housing tax credit or held in a community land trust receive adjustments to some of these factors in determining just valuation.

The bill provides that if a county and municipality enters into an agreement with a property owner that would authorize the local government to record with the clerk of court a restrictive covenant running with the land for a term of at least 20 years requiring that a property will be used to provide affordable housing to extremely-low income to moderate-income persons, as defined in s. 420.0004, F.S., or workforce housing as defined in s. 420.5095(3), F.S., the property appraiser shall consider the covenant when determining the just value of the property.

The bill requires local governments to provide the property appraiser with a list of all agreements entered into in the current calendar year by January 10 of each year. The bill requires the property appraiser to consider the covenant, as well as any amendments or resale restrictions, when determining the just value of a property subject to a covenant.

The bill also allows each property appraiser to choose to allow the owner of tangible personal property to qualify for the tangible personal property exemption without filing an initial return and allows the sole general partner of a Florida limited partnership applying for a tax exemption for non-profit homes for the aged to be a Florida limited liability company whose sole member is a not-for-profit corporation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ad Valorem Taxation

The Florida Constitution reserves to local governments the authority to levy ad valorem taxes on real and tangible personal property.¹ Ad valorem taxes are levied annually by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and provides for specified assessment limitations, property classifications, and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a parcel of real property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

When determining the just value of a property, the property appraiser must take into consideration:⁶

- Present cash value of the property;⁷
- Highest and best use of the property in the immediate future;⁸
- Current use of the property;
- Location of the property;
- Quantity or size of the property;
- Cost of the property and the present replacement value of any improvements to the property;
- Condition of the property;
- Income generated by the property; and
- Net proceeds from the sale of the property.⁹

Affordable Housing in Florida

As a public corporation¹⁰ 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 assists eligible homebuyers with financing and down payment assistance. To fulfill its mission, Florida Housing partners with a number

¹ Art. VII, ss. 1(a), 9(a), Fla. Const.

² S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. S. 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Art. VII, s. 4, Fla. Const.

⁴ Art. VII, ss. 3, 4, and 6, Fla. Const.

⁵ S. 196.031, F.S.

⁶ S. 193.011, F.S.

⁷ The "present cash value" of the property is the amount a willing purchaser would pay a willing seller in an arm's length transaction. S. 193.011(1), F.S.

⁸ The "highest and best use" of the property is determined by taking into account legally permissible uses of a property, including any judicial limitations, state and local land use regulations, historic preservation ordinances, zoning changes, concurrency requirements, permits necessary to achieve the highest and best use, and any moratorium imposed by law that would prohibit or restrict the development or improvement of the property. S. 193.011(2), F.S.

⁹ The property appraiser is instructed to exclude the portions of net proceeds attributable to payments for household furnishings and other items of personal property included in the transaction. S. 193.011(8), F.S.

¹⁰ Ch. 97-167, Laws of Fla., created Florida Housing as a public-private entity to replace the Florida Housing Finance Agency for the purpose of reducing bureaucracy and streamlining administrative processes.

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.¹¹ This calculation include utilities for renters and includes principal, interest, taxes, and insurance for homeowners.¹²

Resident eligibility for Florida Housing programs is governed by area median income (AMI) levels.¹³ Section 420.0004, F.S., provides the AMI eligibility level for many programs, which are based on the county or group of counties in which the property is located as well as family size.¹⁴ Florida Housing may adjust the AMI eligibility level by rule depending on county population, with the following general baselines:

- Extremely low-income means total household income up to 30 percent of AMI;¹⁵
- Very low-income means total household income from 30 to 50 percent of AMI;¹⁶
- Low-income means total household income from 50 to 80 percent of AMI;¹⁷ and
- Moderate income means total household income from 80 to 120 percent of AMI.¹⁸

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.¹⁹ The critical state concern is designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.²⁰

Florida Housing’s programs feature a variety of financing resources to developers of affordable housing including federal Low Income Housing Tax Credits (LIHTC)²¹ and loans provided through the State Apartment Incentive Loan (SAIL)²² Program. To receive financing, developments must meet certain criteria 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

¹¹ Florida Housing Finance Corporation, *Overview of Florida Housing Finance Corporation*, available at <http://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab8.pdf> (last visited Mar. 21, 2019).

¹² *Id.*

¹³ AMI data is determined annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.

¹⁴ *See supra* note 11.

¹⁵ *See* s. 420.0004(9), F.S.

¹⁶ *See* s. 420.0004(17), F.S.

¹⁷ *See* s. 420.0004(11), F.S.

¹⁸ *See* s. 420.0004(12), F.S.

¹⁹ S. 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.

²⁰ S. 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.

²¹ *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.

²² S. 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.

owned by certain exempt entities that 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.²³ Section 196.1978(2), F.S., provides that certain, qualifying multi-family affordable housing projects may receive a 50 percent discount from the amount of ad valorem tax owed after the 15th 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 land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.²⁴

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.²⁵ 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.²⁶

Florida Housing Land Use Restrictive Agreements

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.²⁷ 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.²⁸ All tangible personal property is subject to ad valorem taxation unless expressly exempted.²⁹ Household goods and personal effects,³⁰ items of inventory,³¹ and up to \$25,000 of assessed value for each tangible personal property tax return³² are exempt from ad valorem taxation.

²³ The not-for-profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code.

²⁴ 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. S. 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.

²⁵ See Black’s Law Dictionary (10th ed. 2014).

²⁶ *Id.* S. 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.

²⁷ See Rules 67-48.002(79), 67-48.009(5)(d), F.A.C.

²⁸ S. 192.001(11)(d), F.S.

²⁹ S. 196.001(1), F.S.

³⁰ S. 196.181, F.S.

³¹ S. 196.185, F.S.

³² S. 196.183, F.S.

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.³³ Property owners who lease, lend, or rent property must also file a return. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value.³⁴

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.³⁵

Exemption for Property Used by Non-Profit Homes for the Aged

Property used for non-profit homes for the aged is exempt from ad valorem taxation as long as the facility meets certain criteria.³⁶ A not-for-profit corporation or a Florida limited partnership in which the sole general partner is a not-for-profit corporation must operate the facility.³⁷ At least 75 percent of the residents of the facility must over the age of 62 or totally and permanently disabled.³⁸ Facilities qualifying for the exemption must be licensed by the Agency for Health Care Administration if the facility provides medical services or qualifies as an assisted living facility. Portions of the facility used exclusively for religious or medical services are also exempt from ad valorem taxation.³⁹

Effect of Proposed Changes

The bill provides that if a county or municipality enters into an agreement with a property owner that would authorize the local government to record with the clerk of court a restrictive covenant running with the land for a term of at least 20 years requiring that a property will be used to provide affordable housing to extremely-low income to moderate-income persons, as defined in s. 420.0004, F.S., or workforce housing as defined in s. 420.5095(3), F.S., the property appraiser must consider the covenant when determining the just value of a property.

Each covenant entered into must be recorded in the public records of the county where the property is located. The bill requires local governments to provide the property appraiser with a list of all agreements entered into in the current calendar year by January 10 of each year.

The bill requires the property appraiser to consider the covenant, as well as any amendments or resale restrictions, when determining the just value of a property subject to a covenant.

The bill allows each property appraiser to choose to allow the owner of tangible personal property to qualify for the tangible personal property exemption without filing an initial return.

The bill allows the sole general partner of a Florida limited partnership applying for a tax exemption for non-profit homes for the aged to be a Florida limited liability company whose sole member is a not-for-profit corporation.

³³ S. 193.062, F.S.; see also Dept. of Revenue, Tangible Personal Property, <http://dor.myflorida.com/dor/property/tpp/> (last visited Mar. 21, 2019).

³⁴ Art. VII, s. 3, Fla. Const.

³⁵ S. 196.183(5), F.S.

³⁶ S. 196.1975, F.S.

³⁷ S. 196.1975(1), F.S.

³⁸ S. 196.1975(2), F.S.

³⁹ S. 196.1975(3), F.S.

B. SECTION DIRECTORY:

- Section 1: Creates s. 193.019, F.S., requiring the property appraiser to consider certain affordable housing covenants when determining the just valuation of a parcel.
- Section 2: Amends s. 196.183, F.S., concerning exemptions for tangible personal property.
- Section 3: Amends s. 196.1975, F.S., concerning exemptions for property used by non-profit homes for the aged.
- Section 4: Provides an effective date of July 1, 2019.

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 bill may have an indeterminate impact on the revenues of local governments, to the extent those local governments have or will enter into agreements for affordable housing covenants that reduce the just value of assessed property and the impact of the bill on the property appraiser's valuation of covenants for terms of less than 20 years.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has determined section 2 of the bill will reduce local property tax revenues on tangible personal property 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.⁴⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴⁰ 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 (last visited Mar. 21, 2019).

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DATE: 3/26/2019

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment removes provisions containing specified terms for affordable housing covenants, revising the date by which local governments must provide a list of affordable housing covenants to the property appraiser, and amends provisions relating to tax exemptions for non-profit homes for the aged to allow a Florida limited liability company to qualify for the exemption in certain circumstances.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.