

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 Committee on Community Affairs

BILL: CS/SB 1150

INTRODUCER: Community Affairs Committee and Senator Rodriguez

SUBJECT: Taxation of Affordable Housing

DATE: January 20, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1150 provides that a county or municipality may adopt an ordinance to grant a partial ad valorem tax exemption for property used to provide affordable housing in a multifamily project with at least 50 dwelling units on the basis of it serving a charitable purpose.

The bill limits the exemption value to 75 percent of the assessed value for each dwelling unit used for affordable housing where at least 10 percent of the multifamily project's total units are used for providing affordable housing. Up to 100 percent of the assessed value of the property may be exempt where 100 percent of the multifamily project's total units are used for providing affordable housing.

The bill details certain requirements for the ordinance authorizing such an exemption as well as administration of the exemption.

The provisions of the bill first apply to taxable years beginning on or after January 1, 2023.

The bill takes effect July 1, 2022.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The Florida Constitution prohibits the state from levying ad valorem taxes,⁴ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Ad Valorem Exemption for Literary, Scientific, Religious, or Charitable Organizations

The State Constitution allows the Legislature to exempt from ad valorem taxation “such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes.”¹¹ The Legislature implements these exemptions and sets forth the criteria to determine whether property is entitled to an exemption.¹²

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art. VII, s. 3(a).

¹² Section 196.196, F.S.

To determine whether a property's use qualifies for an education, literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities or other uses of the property.¹³ The portions of the property used predominantly for qualified purposes are exempt.¹⁴

Incidental use of property for an exempt purpose will not qualify the property for an exemption nor will the incidental use of the property for a non-exempt purpose impair an exemption.^{15, 16, 17}

Portions of property used for profitmaking purposes are not exempt and is subject to ad valorem taxation; however, the Legislature has allowed property to remain exempt even when used for profitmaking purposes when the use of the property does not require a business or occupational license and the revenue derived from the profitmaking activity is used wholly for exempt purposes.¹⁸

Exemption of Property Tax for Charitable Purposes and Affordable Housing

In 1999, the Legislature authorized a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption.¹⁹ The property must be owned entirely by a not-for-profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.²⁰ In order to qualify for the exemption, the property must comply with s. 196.195, F.S., for determining non-profit status of the property owner and s. 196.196, F.S., for determining exempt status of the use of the property.

In 2017, the Legislature created s. 196.1978(2), F.S., to provide that property used as affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount if the property:

- Provides affordable housing to natural persons or families meeting the extremely-low, very-low, or low-income limits specified in s. 420.0004, F.S.;
- Provides housing in a multifamily project in which at least 70 units are provided to the above group; and

¹³ Section 196.196(1), F.S.

¹⁴ Section 196.196(2), F.S.

¹⁵ Section 196.196(2), F.S.

¹⁶ *Underhill v. Edwards*, 400 So.2d 129, 132 (Fla. 5th DCA 1981). The district court found that trustees of a private not-for-profit hospital were not entitled to an exemption on the new wing's first floor, which was used for a private purpose and not for a charitable purpose or other exempt purpose, despite the fact that the portion of the hospital used for a non-exempt purpose represented only a very small percentage of the otherwise exempt property.

¹⁷ *Central Baptist Church of Miami, Florida Incorporated v. Dade County, Florida, et. al.*, 216 So.2d 4, 6 (Fla 1968). The Supreme Court found that "limited part time rental of a portion of the church lot for commercial parking on weekday business hours is reasonably incidental to the primary use of the church property as a whole for church or religious purposes and is not a sufficiently divergent commercial use that eliminates the exemption as to the commercial parking lot portion of the property." at 6.

¹⁸ Section 196.196(4), F.S.

¹⁹ Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S., effective July 1, 1999).

²⁰ The not-for-profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) ("charitable purposes" include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

- Is subject to an agreement with Florida Housing to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.²¹

The discount begins on January 1 of the year following the 15th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount terminates when the property is no longer serving extremely-low, very-low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

Affordable Housing

One major goal at all levels of government is to ensure that citizens have access to affordable housing. Housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened." Severely cost burdened households are more likely to sacrifice other necessities like healthy food and healthcare to pay for housing, and to experience unstable housing situations like evictions.

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2021 Florida state median of \$70,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):²²

- Extremely low income – earning up to 30 percent AMI (at or below \$21,000);²³
- Very low income – earning from 30.01 to 50 percent AMI (\$21,001 to \$35,000);²⁴
- Low income – earning from 50.01 to 80 percent AMI (\$35,001 to \$56,000);²⁵ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$56,001 to \$84,000).²⁶

Housing costs reflect what people are willing to pay to live in an area, which in some instances, due to low supply and high demand, makes it difficult for the workforce, elders, and people with disabilities to find affordable homes and apartments. The government helps make housing affordable through decreased monthly rent or mortgage payments, so that income eligible families are able to pay less for the housing than it would otherwise cost at "market rate." Lower monthly payments or down payment assistance is a result of affordable housing financing.

²¹ Section 196.1978(2)(a), F.S. and ch. 2017-36, s. 6, Laws of Fla.

²² U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2021 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2021> (last visited December 3, 2021).

²³ Section 420.0004(9), F.S.

²⁴ Section 420.0004(17), F.S.

²⁵ Section 420.0004(11), F.S.

²⁶ Section 420.0004(12), F.S.

Florida Housing Finance Corporation

The 1997 Legislature created the Florida Housing Finance Corporation (FHFC) as a public-private entity to assist in providing a range of affordable housing opportunities for Floridians.²⁷ The FHFC is a corporation held by the state and housed within the Department of Economic Opportunity (DEO). The FHFC is a separate budget entity and its operations, including those relating to personnel, purchasing, transactions involving real or personal property, and budgetary matters, are not subject to control, supervision, or direction by DEO.²⁸

The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes by stimulating investment of private capital and encouraging public and private sector housing partnerships. As a financial institution, the FHFC administers federal and state resources to finance the development and preservation of affordable homeowner and rental housing and assist homebuyers with financing and down payment assistance.

Land Use Restrictive Agreements

A Land Use Restrictive Agreement (LURA) subjects real property to a restriction in which the owner gives up some of their rights in exchange for the promise of tax credits, funding, and other benefits.²⁹ Typically restrictions include tenant income restrictions, unit set asides for less than market rate rent, and other affordability restrictions.³⁰ Such restrictions are documented in the LURA, which is recorded by the county clerk's office and runs with the land. A LURA can include a time period associated with restriction compliance enforced by the IRS, HUD, or other housing authority.

III. Effect of Proposed Changes:

Section 1 creates section 196.1979, F.S. to provide that, notwithstanding ss. 196.195 and 196.196, F.S., a county or municipality may adopt an ordinance to grant a partial ad valorem tax exemption for property used to provide affordable housing in a multifamily project with at least 50 dwelling units on the basis of it serving a charitable purpose. The bill provides that such an exemption may not be granted for a property unless the associated multifamily project has a recorded land use restriction agreement in favor of the FHFC or other governmental or quasi-governmental jurisdiction which requires that units qualifying for the exemption are used for providing affordable housing.

The bill defines “affordable housing” as a dwelling unit occupied by or restricted to the occupancy of extremely-low-income, very-low-income, low-income, or moderate-income persons as defined in s. 420.0004, F.S.

²⁷ Chapter 97-167, Laws of Fla. Previously, from 1980 through 1997, the former Florida Housing Finance Agency, placed within the former Department of Community Affairs, performed similar duties.

²⁸ Section 420.504(1), F.S.

²⁹ Commercial Real Estate Finance Company of America, *Multifamily Housing – Land Use Restrictive Agreement (LURA) LIHTC*, available at <https://www.crefcoa.com/land-use-restrictive-agreement.html> (last visited Jan. 12, 2022).

³⁰ *Id.*

The bill limits the exemption value to 75 percent of the assessed value for each dwelling unit used for affordable housing where at least 10 percent of the multifamily project's total units are used for providing affordable housing. The bill further allows for an exemption up to 100 percent of the assessed value of the property where 100 percent of the multifamily project's total units are used for providing affordable housing.

The bill provides that an ordinance granting the exemption must:

- Be adopted pursuant to procedures for adoption of a non-emergency ordinance;
- Require that the taxpayer submit an application to the property appraiser each year;
- Specify that the exemption applies only to taxes levied by the local government granting the exemption;
- Specify that the property may not receive an exemption after the expiration or repeal of the ordinance; and
- Identify the percentage of the assessed value that may be exempted.

The bill provides that the local government body must deliver a copy of this ordinance to the property appraiser no later than December 1 of the year before the exemption takes effect, and must notify the property appraiser of such an ordinance's appeal no later than December 1 of the year before the exemption expires.

The bill specifies that the property appraiser may only apply the exemption to those portions of property which are used to provide affordable housing. Vacant units are to be treated as affordable housing property if the use of the units is restricted to providing affordable housing and a reasonable effort is made to lease the units.

The bill provides that any person who improperly receives such an exemption will be subject to a tax lien on their property in the value of the unpaid taxes, as well as subject to repayment plus a penalty of 50 percent of the unpaid taxes plus 15 percent annual interest. This does not apply if the exemption was improperly granted due to clerical mistake or an omission by the property appraiser.

The bill finally clarifies that no eligibility criteria other than the use of property to provide affordable housing, its multifamily status and quantity of units, and applicable land use restriction agreements may be used in determining whether a property qualifies for this exemption.

Section 2 provides that the amendments made by the bill first apply to taxable years beginning on or after January 1, 2023.

Section 3 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Those property owners offering affordable housing in localities providing this exemption would receive the benefits of lower property taxes.

C. Government Sector Impact:

Those local governments choosing to utilize this exemption would be negatively impacted in terms of property tax revenue, but may enjoy the benefits of increased incentives for affordable housing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 196.1979 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 18, 2022:

The CS specifies that property given tax exemptions for providing affordable housing are considered having a charitable purpose. It also details certain requirements for the ordinance authorizing such an exemption as well as administration of the exemption, including treatment of vacant units and common spaces, as well as penalties for improperly granted exemptions.

- B. **Amendments:**

None.