

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 Finance and Tax

BILL: CS/SB 1150

INTRODUCER: Community Affairs Committee and Senator Rodriguez

SUBJECT: Taxation of Affordable Housing

DATE: January 26, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Hackett</u> | <u>Ryon</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Gross</u> | <u>Babin</u> | <u>FT</u> | <u>Favorable</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1150 authorizes a county or municipality to adopt an ordinance to grant an ad valorem tax exemption for property used to provide affordable housing. The property must be in a multifamily project that contains 50 or more residential units, and at least 10 percent must be used to provide affordable housing.

The bill limits the exemption to 75 percent of the assessed value of the units used to provide affordable housing. Units may be entirely exempt if 100 percent of the multifamily project's residential units are used to provide affordable housing.

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

The provisions of the bill first apply to the 2023 tax roll.

The Revenue Estimating Conference analyzed the original version of the bill and estimated an indeterminate reduction to local property tax revenue. Staff does not expect the committee substitute to affect this result substantially.

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 jurisdiction 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 results 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 Florida Constitution allows the Legislature to exempt from ad valorem taxation portions of property that are used predominantly for educational, literary, scientific, religious or charitable purposes.¹¹ The Legislature has implemented these exemptions and set forth 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

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.^{14, 15, 16}

Property claimed as exempt which is used for profitmaking purposes is not exempt and is subject to ad valorem taxation; however, the Legislature has allowed certain 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.¹⁷

Exemption of Property Tax for Charitable Purposes and Affordable Housing

In 1999, the Legislature authorized a charitable use property tax exemption for property owned by a nonprofit corporation that provides affordable housing.^{18, 19} The exemption is limited to only those portions of the property that house persons or families whose income does not exceed 120 percent of the median income of the state, the metropolitan area, or the county where the person lives, whichever is greater.

In 2017, the Legislature authorized a charitable use property tax discount for property where more than 70 of the units provide affordable housing. The discount is limited to only those portions of the property that house persons or families whose income does not exceed 80 percent of the median income of the state, the metropolitan area, or the county where the person lives, whichever is greater. The tax discount amounted to 50 percent of the taxable value of eligible units and was applicable to taxes assessed after the 15th completed year of an agreement with the Florida Housing Finance Corporation.²⁰

In 2021, the Legislature increased the 50 percent discount to a full exemption.²¹

¹³ Section 196.196(1), F.S.

¹⁴ Section 196.196(2), F.S.

¹⁵ *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.

¹⁶ *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.

¹⁷ See section 196.196(4), F.S.

¹⁸ Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).

¹⁹ 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).

²⁰ Section 196.1978(2)(a), F.S. (2018) and ch. 2017-36, s. 6, Laws of Fla.

²¹ See ch. 2021-31, s. 10, Laws of Fla.

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. These levels are published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area.

Housing costs reflect what people are willing to pay to live in an area, which may make 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 housing than it would otherwise cost at "market rate." Lower monthly payments or down payment assistance is a result of affordable housing financing.

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.²² 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 the DEO.²³

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) limits an owner's rights and typically restricts rental of the property to persons who do not surpass specific income levels. Property owners benefit by receiving tax credits, funding, and other benefits. 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

²² Chapter 97-167, Laws of Fla. From 1980 through 1997, the former Florida Housing Finance Agency, placed within the former Department of Community Affairs, performed similar duties.

²³ Section 420.504(1), F.S.

time period associated with restriction compliance enforced by the IRS, HUD, or other housing authority.²⁴

III. Effect of Proposed Changes:

The bill creates section 196.1979, F.S., to exempt property used to provide affordable housing upon the adoption of an ordinance by a county or municipality. The property must be in a multifamily project that contains 50 or more residential units, and at least 10 percent must be used provide affordable housing. The property must have 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” to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9), subsection (11), subsection (12), or subsection (17) of s. 420.0004, F.S. The subsections listed reference the definitions of “extremely-low-income persons,” “low-income persons,” “moderate-income persons,” and “very-low-income persons.” The amount of rent that may be charged to a person who is considered extremely-low-income, for example, is 30 percent of the established income limits of that group, which varies based on where the person lives.

The bill limits the exemption to 75 percent of the assessed value for each residential unit used for providing affordable housing. Units may be entirely exempt if 100 percent of the residential 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 by March 1 of each year and be accompanied by an affidavit from the property owner that each person or family occupying restricted units meet the income limitations of the exemption;
- 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 exempt.

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 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

²⁴ 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. 22, 2022).

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 received the exemption for any year in the prior ten years 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 criteria established in the bill may be used in determining whether a property qualifies for this exemption.

The exemption provided by the bill first applies to the 2023 tax roll.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. The bill does not require a county or municipality to exempt units that provide affordable housing, which would limit their ability to raise local property tax revenue. Rather, the bill provides the option to do so. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise a state tax or fee. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference analyzed the original version of the bill and estimated an indeterminate reduction to local property tax revenue. Staff does not expect the committee substitute to affect this result substantially.

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:

Local governments choosing to utilize this exemption would be negatively impacted in terms of property tax revenue, but may benefit by the increased opportunity to provide 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.