

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 856

INTRODUCER: Community Affairs Committee and Senator Pizzo

SUBJECT: Affordable Housing Tax Reduction

DATE: February 4, 2020

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 856 provides a method for the reduction of specified property taxes to incentivize certain workforce housing projects. The reduction is conditioned upon taxpayer application and is only available to projects located in a county with a population greater than 825,000 that have not received an existing property tax discount for charitable-purpose affordable housing. Additional qualifying criteria for housing projects is defined and includes the number of units that may be built and conditions related to specified proportions of resident area median income levels. The 25-year tax reduction period features a base reduction rate in operating taxes that would have otherwise been assessed for the first 16 years and recalculated assessed reduction rates during years 17-25. Provisions to limit the total number of all qualifying projects in a county are outlined.

The bill also allows a local government to waive impact fees for the construction of supportive housing developed by a not-for profit corporation under certain circumstances. The income level definition of supportive housing mirrors that as used for low income persons in the State Housing Initiatives Partnership Program. In addition, to qualify as supportive housing, a development must provide mental health, substance abuse, or domestic abuse treatment via on-premises social and community support services.

## II. Present Situation:

### Affordable Housing

Affordable housing is generally defined in relation to the annual area median income of the household living in the housing adjusted for family size. Section 420.9071(2), F.S., within the State Housing Initiatives Partnership (SHIP)<sup>1</sup> Program defines “affordable” to mean that monthly rents or monthly mortgage payments, including taxes and insurance, do not exceed 30 percent of that amount which represents the percentage of the median annual gross income for:

- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income for the area;<sup>2</sup>
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income for the area;<sup>3</sup>
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income for the area.<sup>4</sup>

With respect to rental units, a household’s annual income at initial occupancy may not exceed the three threshold percentages above. While occupying the unit, the household’s annual income may increase to an amount not to exceed 140 percent.<sup>5</sup>

### State Affordable Housing Programs

Principal state funding for affordable housing, if appropriated, comes from documentary stamp tax revenues distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.<sup>6</sup> Programs supported by the two trust funds include the State Apartment Incentive Loan Program (SAIL)<sup>7</sup> and the State Housing Initiatives Partnership Program (SHIP)<sup>8</sup> both of which are administered by the Florida Housing Finance Corporation (Florida Housing).<sup>9</sup>

SAIL provides gap financing to developers through non-amortizing, low-interest loans to leverage mortgage revenue bonds or federal Low Income Housing Tax Credit resources and obtain the full financing needed to construct affordable rental units for very low-income families.<sup>10</sup> The SHIP program provides funds to all 67 counties and Florida’s larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

<sup>1</sup> See ss. 420.907-420.9089, F.S. Administered by Florida Housing Finance Corporation, the SHIP Program provides funds to all 67 counties and Florida’s larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

<sup>2</sup> Section 420.9071(28), F.S.

<sup>3</sup> Section 420.9071(19), F.S.

<sup>4</sup> Section 420.9071(20), F.S.

<sup>5</sup> See ss. 420.9071(19), (20), and (28), F.S.

<sup>6</sup> Section 201.15, F.S.

<sup>7</sup> Section 420.5087, F.S.

<sup>8</sup> Sections 420.907-420.9089, F.S.

<sup>9</sup> As a public corporation of the state, Florida Housing Finance Corporation (Florida Housing) acts primarily as a financial institution. It utilizes federal and state resources to finance the development and preservation of affordable homeowner and rental housing and assist eligible homebuyers with financing and down payment assistance.

<sup>10</sup> SAIL funds must be made available for specified groups such as commercial fishing workers and farmworkers, and persons who are homeless, elderly or who have special needs.

**SAIL Funding Parameters: County-Size, Tenant Groups, and Loan Terms**

The need and demand for SAIL funding must be determined by using the most recent statewide low-income rental housing market study conducted every 3 years.<sup>11</sup> Section 420.5087, F.S., specifies both geographic- and demographic-based allocation guidance. Based on the 2019 Rental Market Study, the geographic allocations to counties for 2019-2021 is:

County population of 825,000 or more	53.8 percent
County population of more than 100,000 but less than 825,000	36.2 percent
County population of 100,000 or less	10.0 percent <sup>12</sup>

Counties that currently have a population of 825,000 or more are Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, and Pinellas.

**Workforce Housing**

As used in the Community Workforce Housing Innovation Pilot Program (CWHIP)<sup>13</sup> provided by ch. 2006-69, L.O.F., “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 designated under s. 380.05, F.S.,<sup>14</sup> for which the Legislature has declared its intent to provide affordable housing.<sup>15</sup>

Proviso language in recent General Appropriations Acts has dedicated SAIL funding to construct workforce housing to primarily serve low-income persons as defined in s. 420.0004, F.S.<sup>16</sup> This low-income persons definition for workforce housing stipulates that total household income does not exceed 80 percent of AMI within the state or within the county, whichever is greater.

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<sup>11</sup> Section 420.5087(1), F.S. The 2019 Rental Market Study was prepared by the Shimberg Center for Housing Studies at the University of Florida and is available at [https://www.floridahousing.org/docs/default-source/press/newsroom/publications/rental-housing/2019-rental-market-study.pdf?Status=Temp&sfvrsn=eadc107b\\_2](https://www.floridahousing.org/docs/default-source/press/newsroom/publications/rental-housing/2019-rental-market-study.pdf?Status=Temp&sfvrsn=eadc107b_2).

<sup>12</sup> See Florida Housing Finance Corporation, *Board Meeting Action Items: Corrected Geographic Allocation for 2019 through 2021 SAIL Funding Cycles* (Jun. 21, 2019) available at [https://www.floridahousing.org/docs/default-source/programs/action-items/17fc83c2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=14f1ec7b\\_3](https://www.floridahousing.org/docs/default-source/programs/action-items/17fc83c2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=14f1ec7b_3) (last visited Jan 29, 2020). While the 2019 Rental Market Study reflects a 3.1 percent housing need for small counties, statute requires at least 10 percent be available to each county category. Per statute, the large county category was reduced by 6.9 percent.

<sup>13</sup> Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, Florida Housing administered the pilot program in 2006 and 2007.

<sup>14</sup> Section 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.

<sup>15</sup> Section 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.

<sup>16</sup> See Proviso Specific Appropriation 2223, ch. 2016-66, Laws of Fla.; Proviso Specific Appropriation 2225, ch. 2017-70, Laws of Fla.; and Proviso Specific Appropriation 2225, ch. 2018-9, Laws of Fla.

## 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.<sup>17</sup> The property appraiser annually determines the “just value”<sup>18</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>19</sup> 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,<sup>20</sup> and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>21</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>22</sup> 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;<sup>23</sup> land used for conservation purposes;<sup>24</sup> historic properties when authorized by the county or municipality;<sup>25</sup> and certain working waterfront property.<sup>26</sup>

## Millage Categories and Rate Limitations

Property tax rates, or millage rates, are set by each taxing authority and vary throughout the state. Millage rates are limited by both the Florida Constitution and by general law.

Section 200.001(1)-(2), F.S., provides for county and municipal millages composed of four categories of millage rates as follows:

- General county or municipal millage, which shall be that nonvoted millage rate set by the governing body of the county or municipality.

<sup>17</sup> 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.

<sup>18</sup> 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).

<sup>19</sup> *See* s. 192.001(2) and (16), F.S.

<sup>20</sup> FLA. CONST. art. VII, s. 1(a).

<sup>21</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>22</sup> Section 193.011(2), F.S.

<sup>23</sup> FLA. CONST. art. VII, s. 4(a).

<sup>24</sup> FLA. CONST. art. VII, s. 4(b).

<sup>25</sup> FLA. CONST. art. VII, s. 4(e).

<sup>26</sup> FLA. CONST. art. VII, s. 4(j).

- County or municipal debt service millage, which shall be that millage rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to s. 12, Art. VII of the State Constitution.
- County or municipal voted millage, which shall be that millage rate set by the governing body of the county or municipality as authorized by a vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution.
- County or municipal dependent special district millage.<sup>27</sup>

The Florida Constitution limits counties, municipalities, and school districts to levies of 10 mills (or one percent).<sup>28</sup> By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the 10-mill limitation to repay bonds to finance capital projects and for other purposes for a period of no longer than two years.<sup>29</sup> Counties providing municipal services may also levy up to an additional 10 mills above the 10-mill county limitation within those areas receiving municipal-type services.<sup>30</sup>

Independent special district millage rates are limited by the law establishing the district and must be approved by the voters within the district. Dependent special district millage rates are included in the limitation applicable to the authority to which they are dependent. The Florida Constitution authorizes up to an additional 1 mill to be levied for water management purposes, except in northwest Florida where the limit is 0.05 mill.<sup>31</sup>

### **Exemption of Property Tax for Charitable Purposes and Affordable Housing**

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup> 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.

<sup>27</sup> Section 200.001(5), F.S., provides that dependent special district millage rates shall be set by the board of county commissioners or the governing body of a municipality identified as to the area covered; as to the taxing authority to which the district is dependent; and as to whether authorized by a special act, authorized by a special act and approved by the electors, authorized pursuant to s. 15, Art. XII of the State Constitution, authorized by s. 125.01(1)(q), F.S., or otherwise authorized.

<sup>28</sup> FLA. CONST. art. VII, s. 9. A rate of 1 mill equates to \$1 of tax per \$1,000 of taxable value, or 0.1 percent.

<sup>29</sup> FLA. CONST. art. VII, s. 9.

<sup>30</sup> FLA. CONST. art. VII, s. 9(b); s. 125.01(1)(q), F.S.

<sup>31</sup> FLA. CONST. art. VII, s. 9.

<sup>32</sup> FLA. CONST. art. VII, s. 3.

<sup>33</sup> Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S., effective July 1, 1999).

<sup>34</sup> 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).

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
- 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.<sup>35</sup>

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.

### **Local Government Impact Fees**

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>36</sup> regulatory fees, and special assessments<sup>37</sup> to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.<sup>38</sup> Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee. With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board.

Chapter 2019-165, L.O.F., amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.<sup>39</sup> Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.<sup>40</sup>

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<sup>35</sup> Section 196.1978(2)(a), F.S. and ch. 2017-36, s. 6, Laws of Fla.

<sup>36</sup> Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Jan. 6, 2019). Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>37</sup> *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>38</sup> *See supra* note 4.

<sup>39</sup> Section 163.31801(3)(f) and (g), F.S.

<sup>40</sup> Section 163.31801(3)(e), F.S.

Additionally, ch. 2019-165, L.O.F, established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.<sup>41</sup> Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.<sup>42</sup> Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

### **Permanent Supportive Housing**

Through a combination of affordable housing and individualized support services, permanent supportive housing is designed for people with disabilities who are unlikely to be able to maintain stable housing without service-enriched housing.<sup>43</sup>

Typically, supportive housing is rental housing with a standard lease. The permanent supportive housing apartments may be scattered through the community in mainstream apartment complexes or may be project-based rental units in one or more developments. In some cases, supportive housing apartments are set aside units in larger affordable subsidized housing complexes.

Combined with the rental housing are the individualized, flexible, and accessible supportive services. These services may vary widely and often include case management, health care coordination, behavioral health coordination, job and education coaching, assistance with daily living skills, transportation assistance, and assistance accessing mainstream resources such as food assistance and disability income.<sup>44</sup>

Florida Housing rental programs feature competitive rental resource allocations to develop permanent supportive housing. In 2019, Florida Housing provided financing to build smaller permanent supportive housing properties for persons with developmental disabilities and to persons with special needs.<sup>45</sup>

### **Verification of Documents; Third Degree Felonies; Back Taxes**

A verified document is a document that has been signed or executed by a person who must state under oath (or affirmation) that the facts or matters made therein are true, or other words to that effect.<sup>46</sup> A written declaration means the following: “Under penalties of perjury, I declare that I

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<sup>41</sup> Section 163.31801(3)(h) and (i), F.S.

<sup>42</sup> Section 163.31801(8), F.S.

<sup>43</sup> See Florida Housing Coalition, *Permanent Supportive Housing Property Management Guidebook*, (Jun. 2018) available at <https://www.flhousing.org/wp-content/uploads/2019/03/PSH-Guidebook-FINAL-WEB-06.2018.pdf> (last visited Feb. 4, 2020).

<sup>44</sup> *Id.*

<sup>45</sup> See Florida Housing Finance Corporation, *Competitive Multifamily Programs: RFA 2019-117 and RFA 2019-104* available at <https://www.floridahousing.org/programs/developers-multifamily-programs/competitive/2019/> (last visited Feb. 4, 2020).

<sup>46</sup> Section 92.525(4)(c), F.S.

have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration.<sup>47</sup>

A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000.<sup>48</sup>

Section 193.092, F.S., provides for the assessment of property for “back taxes,” or taxes on property that has escaped taxation because such property was not accounted for on the tax roll. The statute provides a mechanism for the collection of up to three years of back taxes. The tax arrears attach to the property regardless of who currently owns the property.

### III. Effect of Proposed Changes:

**Section 1** amends s.16.3181, F.S., to allow a local government to waive impact fees for the development of supportive housing constructed by a not-for-profit corporation that derives 75 percent of its revenues from contracts or services provided to a state or federal agency. The local government is not required to use any revenues to offset the impact. Supportive housing is defined to mean affordable housing for low-income persons or households as delineated in the SHIP program which provides treatment for mental health, substance abuse, or domestic violence via on-premises social or community support services.

**Section 2** amends 196.1978, F.S., to provide a tax reduction for specified affordable housing. A number of terms used in the section are defined, including:

- “Workforce housing project,” which means a rental housing project that provides at least four but not more than 70 dwelling units for natural persons or households, and in which:
  - At least 10 percent of the rental units are set aside for residents with a total annual gross household income greater than 60 percent and up to 80 percent of AMI adjusted for family size;
  - At least 20 percent of the rental units are set aside for residents with a total annual gross household income greater than 60 percent and up to 100 percent of AMI adjusted for family size; and
  - Rents for the rental units are set aside at the applicable income limitations established by Florida Housing for the county in which the rental housing project is located. For rental units which are not set aside as outlined above, the taxpayer may offer the units at rents it determines at its sole discretion.
- “Qualifying project,” which means a workforce housing project that:
  - Is located in a county with a population of 825,000 or more; and
  - Has not received an affordable housing property exemption pursuant to s. 196.1978(2), F.S., (i.e., affordable housing considered as a charitable purpose and qualifying for a 50 percent property tax discount).
- “Reduction term,” which means the 25-year tax reduction period beginning the year in which the qualifying project is first assessed and certified by the county property appraiser as eligible to receive a reduction in operating taxes.

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<sup>47</sup> Section 92.525(2), F.S. When a verification on information or belief is permitted by law, the words “to the best of my knowledge and belief” may be added.

<sup>48</sup> Sections 775.082, 775.083, and 775.084, F.S.



- “Taxpayer,” which means the person or other legal entity in whose name property is assessed as in s. 192.001, F.S.
- “Base tax” which means the operating taxes remitted to a project taxing authority in the tax year immediately preceding the reduction term.
- “Operating taxes,” which means the nonvoted millage portion of county millage and municipal millage.
- “Project taxing authority,” which means a county or municipality, which is authorized to levy operating taxes against real property in the jurisdiction in which a qualifying project is located.

The bill provides a legislative finding that property used to provide affordable, elderly, and workforce housing to natural persons and households that meet the low-income or moderate-income limits is a charitable purpose.

Notwithstanding current statutory provisions that a property tax exemption granted for religious, literary, scientific, or charitable use of property requires the applicant to be a nonprofit, a taxpayer who builds or renovates a qualifying project after July 1, 2021, may receive a reduction in operating taxes that would otherwise be assessed, if the following criteria are met:

- The taxpayer timely files an application for the tax reduction with the property appraiser no later than March 1 of the year immediately following the year in which the qualifying project is first assessed.
- The taxpayer records a covenant running with the land which restricts the rents of units within the qualifying project.

For the first 16 years of the reduction term, a qualifying project shall be assessed operating taxes in an amount equal to the base tax for the operating project, which base tax shall be increased annually thereafter by 2.5 percent or the Consumer Price Index for the county in which the qualifying project is located, whichever is less.

Beginning in year 17 of the reduction term, the property appraiser shall determine the assessed value of the project and reduce the assessed value in accordance with the percentages set forth below:

Year of Tax Reduction	Workforce Housing Reduction Percentage
17	90 percent
18	80 percent
19	70 percent
20	60 percent
21	50 percent
22	40 percent
23	30 percent
24	20 percent
25	10 percent

If the property appraiser approves the application, the taxpayer must submit the covenant running with the land for recording. The property appraiser shall apply the authorized tax reductions beginning in the appropriate tax year. The taxpayer submitting the application is responsible for the cost of recording the covenant.

A taxpayer who receives a tax reduction is required to submit a report annually to the property appraiser confirming compliance with the rent restrictions required for the tax reduction. The report must include the written declaration set forth in s. 92.525(2), F.S. A taxpayer who falsifies the written declaration commits a felony of the third degree.

Each county with a population of 825,000 or more may, by the adoption of an ordinance and after conducting a public hearing noticed in a newspaper of general circulation, limit the total number of qualifying projects the property appraiser may approve annually. The limit is conditioned upon a finding that such a limitation is necessary to avoid a substantial impairment of the taxing authority's ability to meet its financial obligations to fund other necessary public services.

If the property appraiser determines that a qualifying project that was granted a tax reduction failed to offer rents as required in the recorded covenant, the taxpayer is liable for the payment of any back taxes, penalties, and interest.

The bill takes effect on July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

State mandates on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.<sup>49</sup>

Article VII, Section 18(a) of the Florida Constitution, provides that counties and municipalities are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an

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<sup>49</sup> Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate, and T.K. Wetherell, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Senate Committee on Community Affairs).

insignificant impact, which for Fiscal Year 2019-2020 is forecast at approximately \$2.2 million.<sup>50,51,52</sup>

Article VII, Section 18(b) of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. As in Subsection 18(a), the mandate requirement does not apply to laws having an insignificant impact.

While qualifying taxpayer applicants for the bill's property tax reduction would reduce a local government's authority to raise revenues, the bill provides a process for the local government to limit the number of applications to avoid an impairment of a taxing authority's ability to meet its financial obligations. The process for implementing a limitation requires a noticed public hearing and the adoption of an ordinance the execution of which may require the local government to spend funds. If either of the above issues are deemed a mandate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.<sup>53</sup> It appears that the bill will allow the portions of specified housing projects used for such purposes as well as those not used for such purposes to receive a tax reduction.

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<sup>50</sup> FLA. CONST. art. VII, s. 18(d).

<sup>51</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 7, 2020).

<sup>52</sup> Based on the Florida Demographic Estimating Conference's July 8, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 7, 2020).

<sup>53</sup> FLA. CONST. art. VII, s. 3.

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

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

**B. Private Sector Impact:**

Developers of qualifying workforce housing projects will pay less property taxes.

**C. Government Sector Impact:**

Local governments will experience reduced revenues from their general nonvoted county or municipal millage. According to the Florida Department of Revenue (DOR), if the bill as originally filed passed, DOR would need to amend Form DR-504 and Rule 12D-16.002, F.A.C.<sup>54</sup> It is unclear if this is still the case for the committee substitute.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DOR analysis of the original bill provided comments related to the definition of base tax, the compliance report a taxpayer must file with the property appraiser, and issues related to the value adjustment board.<sup>55</sup> It is unclear if these comments are still relevant for the committee substitute.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 163.31801 and 196.1978.

**IX. 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 on February 3, 2020:**

The committee substitute:

- Provides that the incentivizing tax reduction only applies to specified workforce housing projects.
- Clarifies how the base reduction rate in operating taxes is assessed for the first 16 years of the reduction period and how the recalculated assessed reduction rates are established during years 17-25.
- Allows a local government to waive impact fees for the construction of supportive housing by a non-profit under certain circumstances.

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<sup>54</sup> Florida Department of Revenue, *SB 856 Agency Analysis* (Jan. 28, 2020) (on file with the Senate Committee on Community Affairs).

<sup>55</sup> *Id.*

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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