

**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 1440

INTRODUCER: Community Affairs Committee and Senator Calatayud

SUBJECT: Affordable Housing Property Tax Exemptions for Accessory Dwelling Units

DATE: January 16, 2024      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

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**I. Summary:**

CS/SB 1440 amends the local option tax exemption for affordable housing, enacted in 2023, to provide that, in addition to existing options for what properties may receive the exemption, a county or municipality may exempt up to 100% of the assessed value of an accessory dwelling unit meeting certain affordable housing requirements.

The changes made by the bill first apply to the 2025 ad valorem tax roll, and the bill takes effect July 1, 2024.

**II. Present Situation:**

**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 such as healthy food and healthcare to pay for housing, and to experience unstable housing situations such as eviction.

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. The following are standard household income level definitions and their relationship to the 2023 Florida state AMI of \$85,500 for a family of four (as family size increases or decreases, the income range also increases or decreases):<sup>1</sup>

- Extremely low income – earning up to 30% AMI (at or below \$ 24,850);<sup>2</sup>
- Very low income – earning from 30.01 to 50% AMI (\$24,851 to \$41,450);<sup>3</sup>
- Low income – earning from 50.01 to 80% AMI (\$41,451 to \$66,350);<sup>4</sup> and
- Moderate income – earning from 80.01 to 120% of AMI (\$66,351 to \$102,600).<sup>5</sup>

### **Ad Valorem 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>6</sup> The property appraiser annually determines the “just value”<sup>7</sup> of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>8</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>9</sup> and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>10</sup>

### ***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

<sup>1</sup> U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2023 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2023> (last visited Jan. 10, 2024). Note that income limits may not equal exactly 30, 50, or 80 percent of the statewide Median Family Income due to the application of ceilings and floors.

<sup>2</sup> Section 420.0004(9), F.S.

<sup>3</sup> Section 420.0004(17), F.S.

<sup>4</sup> Section 420.0004(11), F.S.

<sup>5</sup> Section 420.0004(12), F.S.

<sup>6</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>7</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>8</sup> *See* s. 192.001(2) and (16), F.S.

<sup>9</sup> FLA. CONST. art. VII, s. 1(a).

<sup>10</sup> *See* FLA. CONST. art. VII, s. 4.

purposes.<sup>11</sup> The Legislature has implemented these exemptions and set forth criteria to determine whether property is entitled to an exemption.<sup>12</sup>

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.<sup>13</sup>

### ***Local Option Ad Valorem Exemption for Affordable Housing***

In 2023, the Live Local Act<sup>14</sup> created an optional ad valorem tax exemption for affordable housing which may be adopted via ordinance by a county or municipality.<sup>15</sup>

Portions of property eligible for such an exemption must be utilized to house persons or families meeting the extremely-low or very-low-income limits specified in s. 420.0004, F.S, be contained in a multifamily project of at least 50 units where at least 20 percent are reserved for affordable housing, and have rent set such that it provides affordable housing to people in the target income bracket or no higher than 90 percent of the fair market rent value as determined by a rental market study, whichever is less. Additionally, the property must not have been cited for three code violations in the preceding 24 months and must not have outstanding code violations or related fines.

In adopting this exemption, a local government may choose to offer either or both an exemption for two income groups: those earning up to 30 percent AMI and those earning between 30 to 60 percent AMI. The value of the exemption is up to 75 percent of the assessed value of each unit if less than 100 percent of the multifamily project's units are used to provide affordable housing, or up to 100 percent of the assessed value if 100 percent of the project's units are used to provide affordable housing.

An ordinance enacting such an exemption must:

- Be adopted under normal non-emergency procedures;
- Designate the local entity under the supervision of the governing body which must develop, receive, and review applications for certification and develop notices of determination of eligibility;
- Require the property owner to apply for certification on a form including the most recent market study, which must have been conducted by an independent certified general appraiser in the preceding three years; a list of units for which the exemption is sought; and the rent amount received for each unit;
- Require the designated entity to verify and certify property as having met the requirements for the exemption, and to notify unsuccessful applicants with the reasons for denial;
- Set out the requirements for each unit discussed above;

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<sup>11</sup> FLA. CONST. art. VII, s. 3(a).

<sup>12</sup> Section 196.196, F.S.

<sup>13</sup> Section 196.196(1), F.S.

<sup>14</sup> The "Live Local Act", Ch. 2023-17, Laws of Fla., made various changes to affordable housing related programs and policies at the state and local levels, including zoning and land use preemptions favoring affordable housing, funding for state affordable housing programs, and tax provisions intended to incentivize affordable housing development.

<sup>15</sup> Section 196.1979, F.S.

- Require the property owner to submit an application for exemption accompanied by certification to the property appraiser by March 1;
- Specify that such exemption only applies to taxes levied by the unit of government granting the exemption;
- Specify that the property may not receive such an exemption after the expiration of the ordinance granting the exemption;
- Identify the percentage of assessed value to be exempted, and whether such exemption applies to very-low-income, extremely-low-income, or both; and
- Require that the deadline to submit an application and a list of certified properties be published on the government’s website.

Such an ordinance must expire before the fourth January 1 after adoption, however the governing body may adopt a new ordinance renewing the exemption.

### **Accessory Dwelling Units**

An accessory dwelling unit (ADU) is an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.<sup>16</sup> A local government may adopt an ordinance allowing ADUs in any area zoned for single-family residential use.<sup>17</sup> Each ADU allowed by such an ordinance counts towards the affordable housing component of the housing element in the local government’s comprehensive plan.<sup>18</sup>

An application for a building permit to construct such ADUs must include an affidavit which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.<sup>19</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 196.1979, F.S., to provide that, in addition to existing options for the local option tax exemption for affordable housing, a county or municipality may exempt up to 100 percent of the assessed value of an accessory dwelling unit meeting the same affordable housing requirements of the existing exemptions.

The changes made by the bill first apply to the 2025 ad valorem tax roll, and the bill takes effect July 1, 2024.

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<sup>16</sup> Section 163.31771(2)(a), F.S. ADUs are sometimes referred to as “granny flats” to denote their use in accommodating the housing needs of aging parents. ADUs have the potential to make the primary home more affordable by creating rental income for the homeowner, while also providing affordable rental housing.

<sup>17</sup> Section 163.31771(3), F.S.

<sup>18</sup> Section 163.31771(5), F.S.

<sup>19</sup> Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Article VII, s. 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. The bill speaks to a tax exemption which a local government may choose to adopt, but may forego; therefore the mandates restrictions likely do not apply.

**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:**

The Revenue Estimating Conference has not reviewed the bill at this time.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Local governments may see reduced revenues at their own discretion should they participate in the new local option tax exemption provided by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 196.1979 of the Florida Statutes.

**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 January 16, 2024:**

The CS deletes a provision of the bill removing the requirement that ordinances adopting the local option tax exemption for affordable housing expire before the fourth January 1 after adoption.

- B. **Amendments:**

None.