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DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 195

RELATING TO: Affordable Housing

SPONSOR(S): Representative Gay

COMPANION BILL(S): SB 322 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 9 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 15 NAYS 0
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill makes several changes to Florida's affordable housing laws. The changes: (1) clarify that certain low-income housing properties are exempted from ad valorem taxation; (2) provide a state housing tax credit incentive to private corporations participating in urban revitalization projects, including housing specifically designed for the elderly; (3) allow persons between the ages of 55 and 61 (inclusive) to qualify for housing for the elderly under certain conditions; and (4) authorize the Florida Finance Housing Corporation to adopt rules establishing a process for distributing certain unallocated funds under the State Apartment Incentive Loan (SAIL) program.

The Revenue Estimating conference originally estimated the fiscal impact of this bill to be -\$41.2 million in cash and -\$25.5 in recurring revenue to local governments from the ad valorem provision. The corporate income tax credit was estimated to have an impact of -\$31.3 in cash and -\$25.0 in recurring general revenue. The exemption from municipal special assessment was estimated to have an indeterminate negative impact to local revenues. The estimate of the ad valorem exemption is currently being revaluated and the revised estimate on this portion of the bill could be lower.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Low-income Housing Property Exemption

Section 501(c)(3) of the Internal Revenue Code designates qualifying organizations providing low-income housing as charitable and allows such organizations an exemption from federal income tax. The exemption is based on rationale that low-income housing organizations offer relief to poor and distressed persons as defined by Rev. Proc. 96-32, 1996-1 C.B. 717.

Chapter 196, Florida Statutes, enumerates various exemptions from real and personal property and leasehold interests in property taxation. Specifically, s. 196.192, Florida Statutes, authorizes exemptions from ad valorem taxation for property owned by an exempt private entity and used exclusively for exempt purposes. This section does not apply when determining exemptions for property owned by governmental units.

Pursuant to s. 196.192, Florida Statutes, Florida property appraisers are presently exempting property owned by a private exempt or charitable organization as defined by federal law from ad valorem taxation under most circumstances. However, the chapter fails to provide an **expressed** ad valorem tax exemption for low-income housing property which is owned entirely by a charitable, nonprofit corporation.

Recently, Florida's Fifth District Court of Appeals ruled in the case of South Lake Community Foundation, Inc. v. Havill, 707 So.2d 361 (Fla. 5th DCA, 1997) that the non-profit housing organization in that case was not a "charitable" organization. That case can be interpreted in several ways. The proponents of this bill maintain that this case held that non-profit housing organizations, qualified under 501(c)(3) of the Internal Revenue Code, cannot be considered "charitable" unless they provide affordable housing exclusively to persons who are Section 8 Housing and Urban Development voucher tenants. They argue that the court failed to recognize other non-profit housing organizations, qualifying under 501(c)(3) of the Internal Revenue Code, that provide affordable housing to persons under other state affordable housing programs such as the State Apartment Incentive Loan Program (SAIL). Consequently, the proponents argue that the ruling financially undermines non-profit properties which provide housing to low or very low income working families under programs provided for years by the Florida Housing Finance Corporation or local governments.

Alternatively, the lack of any Section 8 Housing at this development, can be read as simply one of the numerous factors which weighed against South Lake Community Foundation, resulting in the denial of the exemption. Under this interpretation of the case, the general principal espoused by the court would be:

While the provision on affordable housing to "low income" people generally constitutes a "charitable purpose," here, the actions of Foundation simply do not fall within the definition of "charitable purpose" found in section 196.012(7). There would need to be some evidence that public funds would need to be allocated in the absence of the Foundation's low income housing efforts. (707 So.2d 361, 364)

Urban Revitalization and Elderly Housing

Some housing experts are concerned that Florida must do more to provide housing for the elderly. They also believe that new resources are necessary to accomplish adequate housing for the elderly in the state. It is further surmised that to restore social and economic viability to urban areas, it is necessary to renovate or construct new infrastructure and housing, including housing specifically targeted to the elderly. Moreover, the state must provide mechanisms to attract and encourage private economic activity. Such a mission is not provided for in Florida's laws.

Chapter 420, Florida Statutes, provides regulations for various housing programs in the state. The chapter is divided into seven parts: (1) State Housing Strategy; (2) Housing Development Corporation of Florida; (3) Low-Income Emergency Home Repair Program; (4) Neighborhood Housing Rehabilitation Programs; (5) Florida Housing Finance Corporation; (6) Affordable Housing; Coalitions for Homeless; Family Emergency Assistance; and (7) State Housing Initiatives Partnership.

Part V of chapter 420, Florida Statutes, provides, in part, Legislative findings that an increase in the cost of developing, operating, and maintaining multifamily rental housing and a significant decrease of rental housing availability is a real problem in the state. Further, Legislative findings make it necessary to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families, including the elderly.

Some housing projects administered by the Florida Housing Financing Corporation target affordable housing for the elderly. Section 420.5087(3)(c)(2), Florida Statutes, provides set-asides to provide loans to sponsors of housing for the elderly under the State Apartment Incentive Loan (SAIL) Program. Section 420.503, Florida Statutes, defines "elderly" as persons 62 years of age or older.

However, projects which qualify for an exemption under Florida's Fair Housing Act for "housing for older persons" pursuant to s. 760.29(4), Florida Statutes, are excluded, by definition, from housing for the elderly. Section 760.29(4), Florida Statutes, defines "housing for older persons" as housing:

1. Provided under a state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by **persons 55 years of age** or older that meet certain requirements that include:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community demonstrates the intent to provide housing for older persons.
 - c. The housing facility or community must comply with certain United States Department of Housing and Urban Development rules.

Until ss. 420.503 and 760.29(4), Florida Statutes, are reconciled, developers sponsoring projects for the elderly under the SAIL program believe they are exposing themselves to potential discrimination law suits from persons between 55 and 61 (inclusive), according to representatives of the development community. There may be pending litigation arising from the nonconforming provisions. However, to date, the representatives have been unable to provide specific evidence of such litigation.

In addition, persons 55 to 61 (inclusive) are excluded from housing for elderly persons for purposes of the HOME Investment Partnership Program pursuant to s. 420.5089, Florida Statutes, or prioritized projects targeting the elderly for purposes of allocating tax credits under s. 420.5099, Florida Statutes. Section 420.5089, Florida Statutes, establishes the HOME Investment Partnership Program which authorizes the Florida Housing Finance Corporation to make loans available to eligible housing providers or home buyers. Section 420.5099, Florida Statutes, authorizes the Florida Housing Finance Corporation to establish procedures for allocating and distributing low-income housing tax credits.

State Apartment Incentive Loan (SAIL) Program

The SAIL program is created to provide mortgage loans to sponsors of housing affordable to very-low-income persons. A portion of SAIL program funds are required to be distributed over successive three-year periods with at least 10 percent of such funds allocated to three levels of counties, small, medium, and large. According to the Florida Housing Finance Corporation, for the first time in approximately 10 years, unallocated funds are available. However, the law does not provide a method for the Florida Housing Finance Corporation to allocate and distribute such funds.

B. EFFECT OF PROPOSED CHANGES:

Low-income Housing Property Exemption

The bill amends the ad valorem tax exemptions in s. 196.192, Florida Statutes, stating that property that is used to provide housing to "persons with income defined under s. 420.0004, F.S.", with housing under any state housing programs authorized under chapter 420, Florida Statutes, "or other similar local or federal governmental affordable housing program", and which is owned

entirely by a nonprofit corporation which qualifies as charitable pursuant to federal requirements shall be exempt from ad valorem taxation. It should be noted that "persons with income defined under s. 420.0004, F.S.," include moderate-income persons (persons making 120% or less of the median income), low-income persons (persons making 80% or less of the median income), and very-low-income (persons making 50% or less of the median income). Moreover, the phrase "other similar local or federal governmental affordable housing program" is vague making it difficult to determine what programs may be found to fall within this provision.

Urban Revitalization and Elderly Housing

The bill creates a state housing tax credit against corporate taxes. The purpose of this provision is to provide an incentive for private corporations to participate in revitalizing urban areas by granting state corporate income tax credits to qualified low-income housing projects, including housing specifically designed for the elderly, and associated mixed-use projects. Some planners believe the combination of projects helps to create a more economically and socially balanced urban environment.

The Florida Housing Finance Corporation is authorized to grant tax credits among designated projects. The allowable credit is nine percent of the eligible basis of any designated project for each year of a 10-year credit period against any corporate tax due in a taxable year. The total amount of tax credit which may be granted for all projects approved is \$25 million annually. The Florida Housing Finance Corporation is also required to adopt allocation procedures to ensure the maximum use of available tax credits based on certain considerations outlined in the bill. However, the bill fails expressly to indicate whether or not such allocation procedures must be done through the rulemaking process.

The bill provides that persons aged 55 and over also qualify for SAIL program projects for housing for the elderly. The same qualification applies if the Florida Housing Finance Corporation adopts a qualified allocation plan that prioritizes projects targeting the elderly for purposes of the HOME Investment Partnership Program.

State Apartment Incentive Loan (SAIL) Program

The bill authorizes the Florida Housing Finance Corporation to adopt rules to establish a system for allocating and distributing funds that remain unallocated under the State Apartment Incentive Loan Program. Preference is to be given to counties with populations of 100,000 or less.

B. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill requires the Florida Housing Finance Corporation (corporation) to adopt rules addressing an unforeseen occurrence. The bill provides specific Legislative guidelines to the corporation to establish an equitable process for distributing certain unallocated funds under the State Apartment Incentive Loan Program.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Florida Housing Finance Corporation (corporation) is responsible for administering the allocation and distribution of certain state housing tax credits aimed at increasing housing specifically designed for the elderly.

The SAIL program for elderly persons, currently defined as 62 and older, allows persons defined as 55 and older, to qualify for the same housing project as those 62 and older.

- (3) any entitlement to a government service or benefit?

Property providing moderate-income , low-income, or very low-income housing and entirely owned by a qualified charitable nonprofit corporation is exempted from ad valorem taxation.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

Yes. The Revenue Estimating conference originally estimated the fiscal impact of this bill to be -\$41.2 million in cash and -\$25.5 in recurring revenue to local governments from the ad valorem provision. The corporate income tax credit was estimated to have an impact of -\$31.3 in cash and -\$25.0 in recurring general revenue. The exemption from municipal special assessment was estimated to have an indeterminate negative impact to local revenues. The estimate of the ad valorem exemption is currently being reevaluated and the revised estimate on this portion of the bill could be lower.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill provides increased allowable options for private corporations by offering tax credit incentives. The incentives are design to steer private corporations to revitalize urban areas by sponsoring low-income housing projects, including housing specifically designed for the elderly, and associated mixed-use projects.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

C. STATUTE(S) AFFECTED:

Sections 420.503, 420.5087, Florida Statutes, and creates ss. 196.1978, 220.185, 420.5093.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 196.1978; provides ad valorem tax exemption to property used to provide housing under any state housing program authorized under chapter 420 "or other similar local or federal governmental affordable housing program" to moderate (making 120% or less of the median income) low (making 80% or less of the median income) and very low-income (making 50% or less of the median income) persons and owned entirely by a nonprofit corporation which qualifies as charitable under federal law; provides that such property must then be considered property owned by an exempt entity and used for a charitable purpose.

Section 2: Creates s. 220.185; provides for a state housing tax credit for housing and mixed-use projects in urban areas needing revitalizing; establishes Legislative findings that: (1) urban areas in the state are experiencing conditions of blight, (2) deterioration of housing and industrial, commercial, and public facilities contribute to the decline of neighborhoods, and (3) additional resources are necessary to significantly improve revitalization efforts by local governments and community development organizations; establishes public policy and purpose for a state housing tax credit; defines critical terms such as "credit period," "eligible and adjusted basis," and "designated and qualified projects"; and authorizes the Florida Housing Finance Corporation to grant state housing tax credits under certain guidelines and limitations.

Section 3: Creates s. 420.5093; establishes the State Housing Tax Credit Program to increase affordable housing in urban areas; requires the Florida Housing Finance Corporation to determine which projects qualify for the tax credits pursuant to s. 220.185, and prepare an annual report, to be approved by the Governor, containing general guidelines for tax credit allocation and distribution to certain projects; directs the Florida Housing Finance Corporation to adopt allocation procedures to ensure the maximum use of available tax credits to encourage development of low-income housing and associated mixed-use projects in urban areas; requires taxpayers wanting to participate in the State Housing Tax Credit Program to submit an application for tax credit to the Florida Housing Finance Corporation; provides that applicant's approval must be in writing and must include a statement of the maximum credit allowable to the applicant; provides that for purposes of the tax credit program and assessing the property for ad valorem taxation, neither the tax credits nor financing generated by tax credits are considered income to the property; and authorizes the Florida Housing Finance Corporation to only use fees received in conjunction to the allocation of state housing tax credits for administering the state housing tax credit program.

Section 4: Amends s. 420.503, Florida Statutes; provides that a project which qualifies for an exemption under the Florida Fair Housing Act as housing for older persons also qualifies as housing for the elderly for purposes of the State Apartment Incentive Loan Program.

Section 5: Amends 420.5087, Florida Statutes; requires the Florida Housing Finance Corporation to adopt rules which establish an equitable process for distributing any portion of the 10 percent of program funds allocated to counties under the State Apartment Incentive Loan Program which remains unallocated at the end of a certain period.

Section 6: Provides that this act takes effect July 1, 1999, except as otherwise provided in the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The corporate income tax credit portion of the bill is estimated to have a -\$33.1 million non-recurring fiscal impact to General Revenue.

2. Recurring Effects:

The corporate income tax credit portion of the bill is estimated to have a -\$25 million recurring fiscal impact to General Revenue.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditure:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The ad valorem exemption contained in this bill is estimated to have a -\$41.2 million non-recurring fiscal impact to local revenue. The exemption from municipal special assessment was estimated to have an indeterminate negative impact to non-recurring local revenues. (See Fiscal Comment)

2. Recurring Effects:

The ad valorem exemption contained in this bill is estimated to have a -\$25.5 million recurring fiscal impact to local revenue. The exemption from municipal special assessment was estimated to have an indeterminate negative impact to recurring local revenues. (See Fiscal Comment)

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Private corporations can participate in the revitalization of Florida's blighted urban areas and receive, if qualified, state housing tax credits to develop affordable housing and mixed-use projects.

3. Effects on Competition, Private Enterprise and Employment Markets:

The State Housing Tax Credit Program may increase the availability of jobs within revitalized blighted urban areas resulting from commercial development encouraged through the program.

D. FISCAL COMMENTS:

The estimate of the ad valorem exemption is currently being revaluated and the revised estimate on this portion of the bill is expected to be lower.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend money or take action that requires expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill reduces revenue raising authority by -\$25.5 million and is a mandate. Thus, a two-thirds majority is needed to pass this bill.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 7, 1999, the House Committee on Community Affairs adopted two amendments to HB 195.

Amendment one allows property owned by nonprofit housing corporations qualifying for state, local, or federal governmental affordable housing programs with less than 51 percent affordable housing units, which are owned exclusively by such corporations qualifying as charitable under federal requirements, to be exempted from state ad valorem taxation.

Amendment two gives municipalities the option of exempting nonprofit HUD financed or insured housing for the elderly or disabled from special assessments for any services.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Nayola R. Frazier

Staff Director:

Joan Highsmith-Smith

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