

**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: SB 856

INTRODUCER: Senator Pizzo

SUBJECT: Affordable Housing Tax Reduction

DATE: January 31, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 856 provides a method for the reduction of specified property taxes to incentivize certain affordable housing, elderly housing and 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 each of the three types of housing projects is defined and includes conditions related to a project’s receipt of housing tax credits or bonds and specified proportions of resident area median incomes levels. The 25-year tax reduction period features a base reduction rate for the first 16 years for all qualifying project types and a descending percentage reduction rate during years 17-25 for affordable housing and workforce housing projects. Provisions to limit the total number of all qualifying projects in a county are outlined.

**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>

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<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.

- 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.

**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

<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.

<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).

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.

Based on the 2019 Rental Market Study, the SAIL demographic tenant group allocations for 2019-2021 are:

Commercial fishing workers and farmworkers	5.0 percent
Homeless persons	10.0 percent
Persons with special needs	13.0 percent
Elderly persons	24.6 percent <sup>13</sup>
Families	47.4 percent <sup>14</sup>

SAIL loan interest rates are set at zero percent for those developments that maintain 80 percent of their occupancy for farmworkers, commercial fishing workers or homeless people.<sup>15</sup> The interest rates are set at one percent for all other developments. Loans are issued for a maximum of 15 years unless housing credit syndication requirements or FannieMae requirements dictate longer terms. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

### Workforce Housing

As used in the Community Workforce Housing Innovation Pilot Program (CWHIP)<sup>16</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>17</sup> for which the Legislature has declared its intent to provide affordable housing.<sup>18</sup>

<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-items17fc83c2fb0d6fb69bf3ff00004a6e0f.pdf?sfvrsn=14f1ec7b\\_3](https://www.floridahousing.org/docs/default-source/programs/action-items17fc83c2fb0d6fb69bf3ff00004a6e0f.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> Section 420.5087(3)(e), F.S., provides that 10 percent of elderly funds is available to provide loans of up to \$750,000 to make improvements to existing affordable elderly rental housing through the Elderly Housing Community Loan Program.

<sup>14</sup> See Florida Housing Finance Corporation, *Board Meeting Action Items: Proposed Geographic and Demographic Allocations for 2019 through 2021 SAIL Funding Cycles* (Jun. 21, 2019) available at [https://www.floridahousing.org/docs/default-source/data-docs-and-reports/action-items.pdf?sfvrsn=fadb107b\\_3](https://www.floridahousing.org/docs/default-source/data-docs-and-reports/action-items.pdf?sfvrsn=fadb107b_3) (last visited Jan. 29, 2020).

<sup>15</sup> For information in this paragraph of the analysis see Florida Housing Finance Corporation, *State Apartment Incentive Loan Background*, available at <https://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited Jan 29, 2020).

<sup>16</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>17</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>18</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.

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>19</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.

### **Federal Low Income Housing Tax Credit Program**

Through a federal population-based allocation to all states, the Low Income Housing Tax Credit (LIHTC) Program<sup>20</sup> provides rental developers with competitive tax credits that they sell to investors in exchange for equity to finance the acquisition, rehabilitation, and new construction of affordable rental housing. Investors use the tax credits for a dollar-for-dollar reduction over ten years in their federal tax liability.<sup>21</sup> The equity infused into the housing transaction lowers the need for additional debt. Florida also receives authority to issue non-competitive housing tax credits that are awarded to developments financed with tax-exempt multifamily Mortgage Revenue Bonds. Florida Housing administers the LIHTC Program in Florida.

Two levels of tax credits are available. The first level, often called “9 percent credits” is designed to compensate a developer for 70 percent of the building’s construction costs (qualified basis) over the 10-year credit period and is competitively allocated by states, the authority of which is provided to each state on a per capita basis. The second level, called “4 percent credits” compensates a developer for 30 percent of the building’s qualified basis for the credit period. These noncompetitive credits are paired with state or local bond financing for as many developments that meet federal and state requirements (i.e., there is no limit on the amount available to a state).

### **Qualifying Eligibility Requirements for Low Income Housing Tax Credits<sup>22</sup>**

In order to be eligible for a LIHTC allocation, developments must meet certain tests that restrict both the amount of rent that is assessed to tenants and the income of eligible tenants. The income test requires development owners to elect one of two income level thresholds, either a “20-50 test” or a “40-60 test.” In order to satisfy the first test, at least 20 percent of the units must be occupied by individuals with income of 50 percent or less of AMI adjusted for family size. To satisfy the second test, at least 40 percent of the units must be occupied by individuals with income of 60 percent of AMI adjusted for family size. The 2018 Consolidated Appropriations Act (P.L. 115-141) added a third income test option that allows owners to average the income of tenants.

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<sup>19</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.

<sup>20</sup> See Tax Reform Act of 1986 (P.L. 99-514).

<sup>21</sup> To clarify this, consider a new affordable housing apartment complex with a construction cost (known as “qualified basis” in LIHTC parlance) of \$1 million. A 9 percent credit would generate a stream of tax credits equal to \$90,000 (9% × \$1 million) per year for 10 years, or \$900,000 in total.

<sup>22</sup> See IRC §42(g)(1).

### **Private Activity Tax Exempt Bonds<sup>23</sup>**

Private activity tax exempt bonds are allocated to Florida Housing pursuant to the calculation in Part VI of ch. 159, F.S., performed by the Division of Bond Finance on an annual basis. Florida Housing receives approximately 25 percent of Florida's annual private activity bond volume (which is used for various purposes in addition to housing).<sup>24</sup> Local housing finance agencies are part of 17 regional pools that receive about half of the state allocation, and housing developments (mostly rental) are the largest share of what is used by the regional pools.<sup>25</sup>

Florida Housing facilitates the issuance of bonds by serving in a conduit capacity to lend bond proceeds to multifamily developers to construct/rehabilitate rental housing to serve low-income households. Each bond indenture is for a single purpose entity, i.e., each development that is financed. Only the development funded by the bonds supports the debt service of that indenture.

Tax exemption allows bondholders to retain more of their investment income. The higher the marginal tax rates that an individual or entity experiences, the greater the economic benefits of tax exempt bond ownership. Tax-exempt bonds are issued at below-market interest rates and are less expensive for bond issuers. Compared to other housing program financing, bond transactions can be relatively expensive and often require other public financing such as 4 Percent Credits and gap financing such as SAIL.

### **Housing Finance Authorities**

Each county in Florida may create by ordinance a Housing Finance Authority (HFA) of the county to carry out the powers granted by the Florida Housing Finance Authority Law.<sup>26</sup> An HFA is composed of not less than five uncompensated members appointed by the governing body of the county.<sup>27</sup> The powers of a HFA are vested in the members and include the power to loan funds to persons purchasing homes and to developers engaged in qualifying housing developments. Persons are eligible for loans if their annual income does not exceed 80 percent of the median income for the county. The sale price on new or existing single-family homes shall not exceed 90 percent of the median area purchase price in the area.<sup>28</sup>

### **HFA Qualifying Housing Developments**

HFA housing developments are deemed "qualifying" if they provide residential housing for four or more families, at least 60 percent of whom are eligible persons.<sup>29</sup> Eligible persons are those determined by the HFA to be of low, moderate, or middle income and may include people

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<sup>23</sup> For information is this section of the analysis *see* Affordable Housing Work Group, *Overview of the State's Implementation of Rental Programs* (August 2017) available at <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab7.pdf> (last visited Jan 29, 2020). Chapter 2017-71, Laws of Fla., established the Workgroup to develop recommendations to address the state's affordable housing needs.

<sup>24</sup> Section 159.804(1)(b), F.S.

<sup>25</sup> *Id.* Unused bond allocation from the regional pools and other state level pools go to Florida Housing at the end of each year.

<sup>26</sup> Section 159.604, F.S.

<sup>27</sup> Section 159.605, F.S.

<sup>28</sup> Section 159.608, F.S.

<sup>29</sup> Sections 159.603(6) and (7), F.S.

earning up to 150 percent of the state or county median family income levels. In determining the income standards of eligible persons, an HFA may consider requirements mandated by federal law. Chapter 2013-83, L.O.F., amended the Florida Housing Finance Authority Law to allow HFAs to utilize a more expansive federal definition for qualified housing developments and also revised an authority's loan-making eligibility parameters. The combined effect of the changes permitted HFAs to promote more mixed-income affordable housing in the state.<sup>30</sup>

### 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>31</sup> The property appraiser annually determines the "just value"<sup>32</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."<sup>33</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>34</sup> and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>35</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>36</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>37</sup> land used for conservation purposes;<sup>38</sup> historic properties when authorized by the county or municipality;<sup>39</sup> and certain working waterfront property.<sup>40</sup>

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<sup>30</sup> See Senate Community Affairs Committee, *CS/CS/HB 437 Community Development: Bill Summary* (2013) available at <http://www.flsenate.gov/Committees/BillSummaries/2013/html/321> (last visited Jan.28, 2020).

<sup>31</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>32</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>33</sup> See s. 192.001(2) and (16), F.S.

<sup>34</sup> FLA. CONST. art. VII, s. 1(a).

<sup>35</sup> See FLA. CONST. art. VII, s. 4.

<sup>36</sup> Section 193.011(2), F.S.

<sup>37</sup> FLA. CONST. art. VII, s. 4(a).

<sup>38</sup> FLA. CONST. art. VII, s. 4(b).

<sup>39</sup> FLA. CONST. art. VII, s. 4(e).

<sup>40</sup> FLA. CONST. art. VII, s. 4(j).

## 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.
- 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>41</sup>

The Florida Constitution limits counties, municipalities, and school districts to levies of 10 mills (or one percent).<sup>42</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>43</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>44</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>45</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>46</sup>

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<sup>41</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>42</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>43</sup> FLA. CONST. art. VII, s. 9.

<sup>44</sup> FLA. CONST. art. VII, s. 9(b); s. 125.01(1)(q), F.S.

<sup>45</sup> FLA. CONST. art. VII, s. 9.

<sup>46</sup> FLA. CONST. art. VII, s. 3.

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>47</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>48</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.

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>49</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.

### **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>50</sup> A written declaration means the following: “Under penalties of perjury, I declare that I 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>51</sup>

A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000.<sup>52</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.

<sup>47</sup> Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).

<sup>48</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).

<sup>49</sup> Section 196.1978(2)(a), F.S. and ch. 2017-36, s. 6, Laws of Fla.

<sup>50</sup> Section 92.525(4)(c), F.S.

<sup>51</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>52</sup> Sections 775.082, 775.083, and 775.084, F.S.

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:

The bill creates s. 196.1979, F.S., to provide a tax reduction for specified affordable housing. A number of terms used in the section are defined, including:

- “Affordable housing project,” which means a qualifying housing development that receives an allocation of 4 percent low-income housing tax credits from Florida Housing, receives bonds for qualifying housing developments from a housing finance authority after July 1, 2020, or both.
- “Elderly housing project,” which means a rental housing project that receives an allocation of 9 percent low-income housing tax credits and that meets all of the following criteria:
  - It reserves at least 80 percent of the rental unit occupancy in the project for the elderly.
  - It offers all rental units to eligible persons.
  - It implements the standards and processes adopted by rule of Florida Housing to reduce barriers to elderly rental housing entry.
- “Workforce housing project,” which means a rental housing project containing four or more dwelling units for natural persons and households which has not received an allocation of low-income housing tax credits, a SAIL loan, or bond proceeds, 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 an affordable housing project, elderly housing project, or 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.
- “Taxpayer,” which means the person or other legal entity in whose name property is assessed as in s. 192.001(13), F.S.
- “Base tax” 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, 2020, may receive a reduction in operating taxes that would otherwise be assessed, if both of 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 after 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 affordable housing, elderly housing, or workforce housing 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, subject to an annual adjustment equal to 2.5 percent beginning in year 2 of the reduction term or the percentage change in the Consumer Price Index for the county in which the qualifying project is located, whichever is less.

After the first 16 years of the reduction term, the qualifying project shall be assessed as follows:

Year of Tax Reduction	Affordable Housing Reduction Percentage	Workforce Housing Reduction Percentage
1-16	100 Percent	100 Percent
17	90 Percent	100 Percent
18	80 Percent	90 Percent
19	70 Percent	85 Percent
20	60 Percent	75 Percent
21	50 Percent	60 Percent
22	40 Percent	50 Percent
23	30 Percent	40 Percent
24	20 Percent	25 Percent
25	10 Percent	15 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 same 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 shall take 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>53</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 insignificant impact, which for Fiscal Year 2019-2020 is forecast at approximately \$2.2 million.<sup>54,55,56</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

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<sup>53</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).

<sup>54</sup> FLA. CONST. art. VII, s. 18(d).

<sup>55</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>56</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).

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>57</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.

**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 affordable housing, elderly housing and workforce housing projects will pay less property taxes.

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<sup>57</sup> FLA. CONST. art. VII, s. 3.

**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 passes, DOR would need to amend Form DR-504 and Rule 12D-16.002, F.A.C.<sup>58</sup>

**VI. Technical Deficiencies:**

It is unclear how the annual adjustments to the assessment of operating tax and base tax in years 1-16 of the reduction term (lines 112-118) operate with the specified 100 percent assessment reduction in taxes for years 1-16 (lines 118-121). The sponsor may want to clarify the connection between these two calculation processes.

**VII. Related Issues:**

The DOR analysis of the bill provided the following additional comments:

- The sponsor may want to consider including the July 1, 2020 date in the definition of workforce housing project, similarly to the definition of affordable housing project that includes the date.
- The definition of base tax should be revised to replace “remitted” with “assessed.” Section 196.1979(3), F.S., of the bill provides that a qualifying project shall be assessed operating taxes.
- The bill creates 196.1979(5), F.S., that provides the taxpayer must file a “report” annually to the property appraiser confirming compliance with the rent restrictions required for the receipt of the reduction. No deadline for filing the report is provided.
- The bill does not specify which type of special magistrate would hear appeals at the value adjustment board pursuant to sections 194.035 and 194.034, F.S., which currently provide for appraiser magistrates to hear value petitions and attorney magistrates to hear exemption and classification and portability petitions.<sup>59</sup>

**VIII. Statutes Affected:**

This bill creates section 196.1978 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.)

None.

**B. Amendments:**

None.

<sup>58</sup> Florida Department of Revenue, *SB 856 Agency Analysis* (Jan. 28, 2020) (on file with the Senate Committee on Community Affairs).

<sup>59</sup> *Id.*

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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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