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DATE: April 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1653

RELATING TO: Ad Valorem Tax Administration

SPONSOR(S): Representative Arnall

STATUTE(S) AFFECTED: Section 193.011, Florida Statutes

COMPANION BILL(S): SB 2360 (c)

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

- (1) COMMUNITY AFFAIRS
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill requires property appraisers, when considering the highest and best use to which property can be expected to be put in the immediate future and the present use of property, to consider any applicable deed restriction imposed by federal or state law. The bill requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. The bill also requires the rental income from rent-restricted units in low-income tax credit developments be valued giving due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land.

The bill has no fiscal impact on state government. It is estimated that the bill will result in a \$10.7 million reduction in revenues to local governments in FY 1998-99. The provision in the bill providing that "neither the tax credits, nor the value of the equity generated by tax credits, allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property" will result in an indeterminate reduction in revenues to local governments in FY 1998-99.

As discussed in section IV of the analysis, this bill reduces the revenue raising authority of counties and municipalities. The constitutional mandate provisions apply, and the bill must be enacted by two-thirds vote of both houses of the Legislature.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Low Income Housing Tax Credit Program

In 1986, The United States Congress created the Low-Income Rental Housing Tax Credit (LIHTC) Program (Section 42 of the Internal Revenue Code of 1986, as amended). The program gives developers credit towards federal tax liability in exchange for acquiring, substantially rehabilitating, or constructing rental housing projects that set aside 20 percent or more units for individuals or families with very low incomes. The amount of credit that is allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirement.

Section 420.5099, F.S., governs Florida's participation in the LIHTC program and designates the Florida Housing Finance Agency (FHFA) as the sole issuer of tax credits in Florida. To date, the state LIHTC program has produced over 40,000 units valued at over \$1.9 billion. Approximately 4,000 new units are added each year. The state's tax credit allocation authority was \$31.6 million in 1994, \$20.7 million in 1995, and \$18.2 million in 1996. All 1994, 1995, and 1996 tax credits were allocated. The FHFA estimates the state's allocation authority for 1997 will be \$18 million.

According to the Florida Housing Finance Agency, a typical "tax credit" development has approximately 150 units, is newly constructed, and sets aside 95 percent of its units for people with incomes at or less than 60 percent of the area median income. The typical development has a total cost of approximately \$6.5 million and will generate \$483,075 in tax credits annually for 10 years. Developments must remain affordable for 15 years to take advantage of the tax credits.

Ad Valorem Taxation

Article VII, section 4 of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." However, the Florida Constitution does allow agricultural, high water recharge, and noncommercial recreational property to be classified by the Legislature and assessed solely on the basis of character or use. Additionally, tangible personal property and livestock that is held as inventory may be assessed at a specified percentage of its value or totally exempted from taxation.

The Florida Supreme Court has interpreted "just valuation" to mean fair market value. Walter v. Schuler, 176 So. 2d 81 (Fla. 1965). Such an assessment may be exclusive of reasonable fees and costs of sale. Oyster Pointe Resort Condo. v. Nolte, 524 So. 2d 415 (Fla. 1988).

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

1. The present cash value of the property, exclusive of reasonable fees and costs of purchase;

2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of improvements;
6. The condition of the property;
7. The income from the property;
8. The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Assessment of LIHTC Properties

During the 1995 Legislative Session, the Legislature considered several initiatives relating to ad valorem taxes imposed on LIHTC properties. These initiatives were intended to address a perceived problem in the way LIHTC properties were assessed and to provide property tax relief to the owners of LIHTC properties. Because of the constitutional requirement to appraise property at full market value, and the case law discussed above, property appraisers appraised LIHTC properties without considering the rent restrictions, or by including the value of the tax credits as income to the property. Several owners of LIHTC properties and their representatives argued and continue to argue that this approach is unfair and has resulted in severe cash flow problems for these low-income housing developments. In brief, they argue that tax credits are not income to the property, and the income from rent restricted units should be considered the actual rent charged.

House Bill 2039, which became chapter 95-383, Laws of Florida, amended section 420.5099, F.S., relating to allocation of the low-income housing tax credit, to provide that for purposes of implementing the Low-Income Tax Credit Program, neither tax credits, nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property and the rental income from rent restricted units in a low-income tax credit development shall be the actual rents charged.

Based on interviews with several property appraisers, the Impact Conference estimated that two-third of the LIHTC units would be assessed based on income to the property as defined by the amendments to section 420.5099, F.S. However, subsequent to passage of HB 2039, the Department of Revenue received inquiries from property appraisers requesting guidance on the interpretation of this legislation and its effect on the appraisal and assessment of LIHTC properties. The department issued a property tax information bulletin on August 13, 1996, stating that "no authority exists which makes this legislation applicable to appraisals of low-income tax credit developments for purposes of property taxation.

B. EFFECT OF PROPOSED CHANGES:

This bill requires property appraisers, when considering the highest and best use to which property can be expected to be put in the immediate future and the present use of property, to consider any applicable deed restriction imposed by federal or state law. The bill requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. The bill also requires the rental income from rent-restricted units in low-income tax credit developments be valued giving due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land.

C. 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?

No.

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

No.

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

No.

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?

The bill would result in lower appraisals for LIHTC properties, and thus lower ad valorem tax payments.

- 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?

No.

- 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?

No.

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

No.

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

No.

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.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Section 193.011, F.S., relating to factors to be considered by property appraisers when deriving just valuation, is amended to revise subsection (2) and to add a new subsection (9). Subsection (2) is amended to require property appraisers, when considering the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, to consider any applicable deed restriction imposed by federal or state law.

Subsection (9) is created to require, in considering ad valorem assessment of affordable housing programs, that neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. The subsection also requires the rental income from rent-restricted units in low-income tax credit developments be valued giving due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land.

Section 2. An effective date of January 1, 1998, is provided.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

This bill will lower appraisals of low-income housing tax credit developments for ad valorem taxation purposes. It is estimated that the bill will result in a \$10.7 million reduction in revenues to local governments in FY 1998-99. The provision in the bill providing that "neither the tax credits, nor the value of the equity generated by tax credits, allocated to or invested in low-income housing tax credit developments, shall be considered as income to the property" will result in an indeterminate reduction in revenues to local governments in FY 1998-99.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Any reduction in revenues to local governments resulting from this bill could result in a shift in tax burden to other property owners.

2. Direct Private Sector Benefits:

This bill will reduce ad valorem assessments of affordable housing programs, which will result in a decrease in ad valorem taxes.

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

Indeterminate. By lowering property tax liabilities for LIHTC program properties, the bill will improve the financial position of LIHTC property owners. The bill also may make LIHTC program developments more financially appealing and increase competition for the available state allocation of tax credits.

D. FISCAL COMMENTS:

This bill has not been reviewed by the Fiscal Impact Conference; therefore, the estimated fiscal impact is preliminary. The estimated fiscal impact on local government is based upon several assumptions. The bill requires property appraisers to give due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land when valuing the rental income from rent-restricted units in a LIHTC development. The estimate assumes that all LIHTC units will be appraised based on an income approach where income from rent restricted units will be considered the actual rent charged.

The analysis assumes 45,000 LIHTC units will exist in fiscal year 1998-99 and relies on assumptions used to estimate the fiscal impact of HB 2039 during the 1996 Legislative Session. A current average assessment per apartment of \$29,961 is assumed, based on figures developed for the 1995 legislation. A 95 percent occupancy rate is assumed. The estimate assumes an average local government millage rate of 21.65. Finally, the

estimate assumes the bill will decrease ad valorem tax liabilities by \$250/unit based on figures developed for the 1995 legislation.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require expenditures by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will reduce the revenue raising authority of municipalities by an indeterminate amount. Article VII, Section 18(b) of the Florida Constitution provides:

(b) Except upon approval of each house of the legislature by two-thirds 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 revenues in the aggregate, as such authority exists on February 1, 1989.

Subsection (d) of section 18 of Article VII of the State Constitution provides an exemption for laws having an insignificant impact (\$1.4 million).

The bill prohibits property appraisers from considering tax credits or the value of the equity generated by tax credits as income to the property when considering ad valorem assessment of affordable housing programs. Property appraisers who under current law consider such tax credits as income to the property will be prohibited from doing so if this legislation becomes law. This will result in an indeterminate reduction in revenue raising authority for counties and cities.

The bill also requires property appraisers to give due consideration to all limitations imposed by federal, state, and local law or any other limitation running with the land when valuing the rental income from rent-restricted units in a LIHTC development. If it is assumed property appraisers will interpret this provision to require them to appraise all LIHTC units based on an income approach where income from rent restricted units will be considered the actual rent charged, the bill would result in an estimated reduction in the revenue-generating authority for counties and municipalities of \$9.977 million in FY 1998-99. However, property appraisers may interpret this provision as only requiring them to give due consideration, not necessarily to appraise all LIHTC units based on an income approach where income from rent restricted units will be considered the actual rent charged.

In summary, the bill would result in an indeterminate reduction in revenue raising authority for counties and cities. The constitutional provisions apply, and the bill must be enacted by two-thirds vote of both houses of the Legislature.

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

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

V. COMMENTS:

Constitutional Issues

This bill requires that in considering ad valorem assessment of affordable housing programs, that neither the tax credits nor the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments be considered as income to the property. This requirement may be subject to judicial scrutiny as a possible violation of Article VII, section 4 of the Florida Constitution, which requires "a just valuation of all property for ad valorem taxation..." The question before a court would be rather the tax credits or the value of the equity generated by tax credits allocated to or invested in low-income housing tax credit developments is income to the property.

While as noted in the Present Situation the statutes outline the factors that property appraisers are to consider in deriving just valuation, the Florida Supreme Court has ruled that the factors used and the weight given to any factor or method of valuation is at the discretion of the property appraiser. Valencia Center, Inc. v. Bystrom, 543 So. 2d 214 (Fla. 1989). The court has also ruled that when "determining the fair market value of income-producing property which is encumbered by a long-term submarket lease . . . the resulting valuation must represent the value of all interests in the property -- in other words, the fair market value of the unencumbered fee." Schultz v. TM Florida-Ohio Realty Ltd., 577 So. 2d 573 (Fla. 1991).

In Valencia Center, Inc. v. Bystrom, the Florida Supreme Court found that:

"The just valuation at which property must be assessed under the constitution and section 193.011 is synonymous with fair market value.... In arriving at fair market value, the assessor must consider, but not necessarily use, each of the factors set out in section 193.011. The particular method of valuation, and the weight to be given each factor, is left to the discretion of the assessor, and his determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals."

In Schultz v. TM Florida-Ohio Realty Ltd., the Florida Supreme Court ruled that

"[W]hen determining the fair market value of income-producing property which is encumbered by a long-term submarket lease...the resulting valuation must represent the value of all interests in the property -- in other words, the fair market value of the unencumbered fee." Schultz v. TM Florida-Ohio Realty Ltd., 577 So. 2d 573 (Fla. 1991).

Finally, in Robbins v. Summit Apartments, Ltd., 586 So. 2d 1068 (Fla.App 3 Dist. 1991)(Review Denied 592 So. 2d 692 (Fla. 1991)), the taxpayer contended that the fair market value of its property -- an apartment complex regulated by the United States

Department of Housing and Urban Development (HUD), including rent controls -- should be reduced due to the HUD restrictions which limited the income derived from the property. The trial court had ruled in favor of the taxpayer, but the appellate court reversed and remanded the case with instructions. The court found that for purposes of assessing tax against the apartment complex, the valuation must be based on the fair market value of unencumbered fee. The court also found that:

"..... the legislature in our state requires utilization of all of the statutory criteria outlined in section 193.011 to determine the just valuation of income producing property. Therefore we are not persuaded by the taxpayer's argument. Finally, even if a policy reason exists for reducing the valuation on HUD regulated properties, this court is required to follow the controlling decisions of the Florida Supreme Court."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Thomas L. Hamby, Jr.

Jenny Underwood Dietzel