

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 322

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Klein

SUBJECT: Ad Valorem Taxation

DATE: March 16, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FR</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill addresses the following issues related to housing:

- amends s. 196.1975, F.S., to specify the property owned by a Florida Limited Partnership, under certain conditions, is not disqualified from an ad valorem tax exemption;
- creates s. 196.1978, F.S., to provide a charitable property tax exemption for certain property used for moderate, low, and very low income housing;
- amends s. 170.201, F.S., to allow municipalities to exempt certain religious, educational, and subsidized housing facilities from any special assessments levied by that municipality;
- creates s. 220.185 & s. 420.5093, F.S., to create the State Housing Tax Credit Program;
- amends s. 420.503, F.S., to expand the definition of “housing for the elderly;” and
- amends s. 420.5087, F.S., to allow the Florida Housing Finance Corporation to adopt rules establishing a process for distributing unallocated housing funds.

This bill amends sections 196.1975, 170.201, 420.503, & 420.5087 and creates sections 196.1978, 220.185 & 420.5093 of the Florida Statutes.

II. Present Situation:

Property Exemptions for Nonprofit Homes for the Aged

Section 196.1975, F.S., outlines the criteria for a property tax exemption for nonprofit homes for the aged. Subsection (2) provides that a corporation will not be disqualified for the exemption if, for purposes of federal tax credits, the property is leased to a Florida limited partnership, the sole general partner of which is the nonprofit corporation, and the home for the aged was in existence or under construction on or before April 1, 1995.

The Charitable Property Tax Exemption

Section 3(a), Art. VII of the State Constitution allows the Legislature to exempt from property taxation “...such portions of property as are used predominantly for educational, literary, scientific or charitable purposes.”

Pursuant to chapter 196, F.S., property must meet the following criteria to qualify for a charitable property tax exemption:

- The property must be owned and used by the exempt entity for charitable purposes (s. 196.192(2), F.S.) “Charitable purpose” is defined in s. 196.012(7), F.S., as

“...a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal.”

Subsection 196.195(5), F.S., specifies, in part, that no charitable exemption be granted “until the applicant has been found.....to be nonprofit as defined by this section.” (Emphasis added) While the entire section lists criteria to be considered when determining the nonprofit status of applicants, subsection (4) states, in part, the following:

(4) Notwithstanding the provisions of subsections (2) and (3), a corporation organized as nonprofit under chapter 617 which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o) and which has valid exemption from federal income tax under s. 501(c)(3) of the internal Revenue Code is nonprofit.

- The property must be exclusively or predominantly used for a charitable purpose (s. 196.192(2), F.S.). Predominant use of property is defined as “use of property for exempt purposes in excess of 50 percent” but less than exclusive, which is 100 percent (s. 196.012(2) and (3), F.S.). The courts have clarified that unless the entire property is used at least predominantly for an exempt use, no portion of it qualifies for an exemption. *North Shore Medical Center, Inc. v. Bystron* 461 So.2d 167 (Fla. 3rd DCA 1984) After the property meets the predominant use test, the exemption is available only to those portions of property used for charitable purposes.
- The property cannot be “used for profit making purposes.” (s. 196.196(3), F.S.) This requirement is reinforced in s. 196.192, F.S., which stipulates that “each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use.” (emphasis added.)

Because exemptions from taxation results in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994)

Recent Court Decisions Affection the Charitable Tax Exemption

In the area of affordable housing, recent court decisions further guide property appraisers in determining properties qualified for the charitable tax exemption. The Fifth DCA upheld a lower court's decision granting a charitable tax exemption to Public Housing Assistance, Inc., reasoning that the discontinuance of such services "could legally result in the allocation of public funds to provide" low-income housing for indigent farm workers. Thus, the court found that these services fell within the statutory definition of 'charitable purpose.' *Public Housing Assistance, Inc. v Havill*, 571 So.2d 45 (Fla. 5th DCA 1990).

On the other hand, an Appellate Court upheld the denial by the Lake County Property Appraiser of a charitable property tax exemption for the Southlake Community Foundation Inc., a nonprofit owned affordable housing component of the Aurora development in Lake County. *Southlake Community Foundation, Inc. v Havill*, 707 So.2d 361 (Fla. 5th DCA 1998). The court found that:

- The "practical dominion" exercised by Aurora over Southlake, with the attendant economic benefits, "overwhelm any use of the property" by Southlake. The court reasoned that "the predominant use of Aurora was economic, not charitable," therefore rendering Southlake ineligible for the exemption.
- "(T)he actions of the Foundation simply do not fall within the definition of 'charitable purpose' found in section 196.012(7). There would have to be some evidence that public funds would need to be allocated in the absence of the Foundations' low income housing efforts."

Interested parties contend that this ruling financially undermines nonprofit properties which provide housing to low or very low income residents.

501(c)(3) Corporations

Section 501(c)(3) of the Internal Revenue Code [26 USC Sec. 501] provides, in part, that the following organizations are exempt from federal taxes:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.....no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Internal Revenue Procedure 96-32

Internal Revenue Procedure 96-32 provides guidelines for establishing "charitable" status for organizations that provide low-income housing. First, it sets a "safe harbor" under which such organizations will be deemed charitable because they relieve the poor and distressed. This threshold appears to be a relatively high standard for the provision of affordable housing to the poor. If the "safe harbor" threshold is missed, organizations may qualify as charitable if they meet other specified criteria. In addition, "housing organizations may rely on other charitable purposes

to qualify for recognition of exemption from income tax as Code Sec. 501(c)(3) organizations.” Such exempt purposes include, but are not limited to:

- Combating community deterioration;
- Lessening the burdens of government;
- Elimination of discrimination and prejudice;
- Lessening neighborhood tensions; and
- Relief of the distress of the elderly or physically handicapped.

It appears that a variety of non-profit groups providing a variety of services could comply with Internal Revenue Procedure 96-32 and maintain “charitable” status as an organization that provides low-income housing.

However, Internal Revenue Procedure 96-32 stipulates the following:

If an organization furthers a charitable purpose it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization’s activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

Definition of Moderate, Low, and Very-Low Income Persons

Part 1 of chapter 420, F.S., is the State Housing Strategy Act. Section 420.004(9), F.S., defines low-income persons as:

one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(10), F.S., defines moderate-income persons as:

one or more natural persons of a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 420.004(14), F.S., defines very-low-income persons as:

one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Exemptions from Municipal Special Assessments

Section 170.201, F.S., 1998 Supplement, grants municipalities the authority to levy special assessments to fund capital improvements and municipal services. Subsection (2) allow municipalities to exempt certain religious, educational, and subsidized housing facilities from special assessments levied for emergency medical services.

Federal Tax Credit Program for Low-Income Housing

The Tax Reform Act of 1986 established the Federal Low Income Housing Tax Credit program (LIHTC). Each year, the U.S. Department of Treasury awards each state with an allocation authority consisting of the per capita amount (\$1.25) and the state's share of the national pool (unused credits from other states). The Florida Housing Finance Corporation (FHFC) is the sole issuer of tax credits for Florida. Since 1987, the program has allocated over \$187 million in tax credits for the production of more than 42,000 affordable rental units, valued at over \$2.2 billion.

Tax credits may be claimed by owners of residential rental property used for low income housing. The credit amounts are based on the cost of the building and the portion of the project that low income households occupy. The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. A percentage of the qualified basis may be claimed for 10 years as the low income housing credit. Eligible properties must comply with a number of requirements regarding tenant income levels, gross rents, and occupancy. Projects must be held for low-income use for a minimum of 15 years under federal law. For a project to qualify for the low income housing credit, one of two tests must be met:

- at least 20 percent of the project must be occupied by households with incomes at or below 50 percent of the area median income; or
- at least 40 percent of the project must be occupied by households at or below 60 percent of area median income.

Elderly Housing & The Florida Fair Housing Act

Part V of chapter 420, F.S., regulates the Florida Housing Finance Corporation, which is responsible for administering various housing programs in the state. Some of these programs target affordable housing for the elderly. Paragraph 420.5087(3)(c), F.S., 1998 Supplement, established set-asides to provide loans to sponsors of housing for the elderly under the State Apartment Incentive Loan (SAIL) Program. Subsection 420.503(15), F.S., 1998 Supplement, defines "elderly" as persons 62 years of age or older.

Part II of chapter 760, F.S., contains the provisions of Florida Fair Housing Act. The Act establishes the state's policy on fair housing, defines various terms, prohibits discrimination in the sale or rental of housing, the provision of brokerage services, and the financing of housing or residential real estate transactions. The Act also contains exemptions, to include "housing for older persons." Section 760.29(4), F.S., defines "housing for older persons," in part, as housing intended and operated for occupancy by persons 55 years of age or older meeting certain requirements.

Projects which qualify as "housing for older persons" under Florida's Fair Housing Act do not qualify, by definition, as "housing for the elderly" under section 420.503, F.S., 1998 Supplement,

which qualifies projects for the SAIL, HOME Investment Partnership Program (HOME) projects (under s. 420.5089, F.S., 1998 Supplement) and LIHTC projects targeting the housing for the elderly (under s. 420.5099, F.S.).

State Apartment Incentive Loan (SAIL) Program

The SAIL program provides mortgage loans to sponsors of housing affordable to very-low-income persons. (See s. 420.5087, F.S., 1998 Supplement) 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 small, medium, and large counties. According to the FHFC, for the first time in approximately 10 years, unallocated funds are available in the categories. However, the law does not provide a method for the FHFC to allocate and distribute such funds.

III. Effect of Proposed Changes:

Section 1 amends ss.196.1975(1), F.S., to provide that a not for profit corporation will not be disqualified for a property tax exemption for purposes of allocating federal tax credits, if the property is owned by a Florida limited partnership, the sole general partner of which is the nonprofit corporation, and the home for the aged was in existence or under construction on or before April 1, 1995.

Section 2 creates s. 196.1978, F.S., to grant a charitable property tax exemption for any property:

- that is used to provide housing pursuant to any state housing program authorized under chapter 420 (HOME, SAIL, & LIHTC) or similar local or federal programs;
- that provides housing to moderate, low-income and very-low-income persons, as defined in s. 420.0004, F.S.;
- that is owned entirely by a nonprofit corporation that meets the definition of a charitable organization under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, and
- that complies with the Internal Revenue Procedure 96-32, 1996-1 C.B. 717.

This provision thereby supersedes the current statutory definition of charitable purpose, as interpreted by the court in *Southlake v Havill* (See s. 196.012(7), F.S.). This provision is to apply retroactively to taxes based on assessments made on January 1, 1997.

Section 3 amends s. 170.201(2), F.S., 1998 Supplement, to allow municipalities to exempt certain religious, educational, and subsidized housing facilities from any special assessments levied by that municipality, rather than only special assessments levied for emergency medical services.

Section 4 creates s. 220.185, F.S., to establish a state housing tax credit against state corporate income taxes. The provision includes Legislative Findings and a statement of Policy and Purpose, which declares that the tax credit program provides an incentive for private corporations to participate in the revitalization of 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.

This section also provides definitions of key terms, which are the same as or similar to terms used in the LIHTC program. The “credit period” extends for 5 years, rather than 10 as is in the LIHTC

program. The term “eligible basis” is defined the same as it is in the LIHTC program. The term “adjusted basis” references the federal code. The term “qualified project” means a “project located in an urban infill area, at least 50 percent of which, on a cost basis, consists of a qualified low-income project within the meaning of s. 42(g) of the Internal Revenue Code” -- which references the Federal code for the LIHTC program. However, the income restrictions imposed by that part do not apply to projects designed specifically for the elderly, unless imposed by the FHFC. In addition, “urban infill area” is defined as an area designated for urban infill as defined by s. 163.3164, F.S.

This section also establishes the parameters of the new program. The allowable credit is nine percent of the eligible basis of any designated project for each year of a 5-year credit period against any state corporate income tax due in a taxable year. The total amount of tax credit which may be granted for all projects approved under this bill is \$5 million annually for five years. The FHFC is required to allocate the tax credit among designated projects. Designated projects are required to comply the applicable provisions of s. 42 of the Internal Revenue Code, which is the section governing the LIHTC program. Transfer of the tax credit is limited to other owners of the designated project.

Section 5 creates s. 420.5093, F.S., to create the State Housing Tax Credit Program within the FHFC. The FHFC is required to establish eligibility criteria, application procedures, and determine qualified projects. The board of directors of FHFC is responsible to administer the allocation procedures and determine allocations on behalf of the corporation. The FHFC is required to prepare an annual plan, to be approved by the Governor, containing allocation and distribution guidelines. This provision also establishes application and application approval criteria.

Subsection 420.5093(5), F.S., duplicates s. 420.5099(5), F.S., which addresses LIHTC properties, to impose property tax assessment restrictions. When assessing property for ad valorem tax purposes, “neither the tax credits nor financing generated by tax credits shall be considered as income to the property, and the rental income from rent-restricted units in a state housing tax credit development shall be recognized by the property appraiser.”

Section 6 amends ss. 420.503(19), F.S., 1998 Supplement, to add to the definition of “housing for the elderly.” This provisions states that projects that qualify for an exemption under the Fair Housing Act as housing for older persons (ss. 760.29(4), F.S.), which includes housing for persons aged 55 and over, also qualify for SAIL, LIHTC and HOME programs targeted for the elderly.

Section 7 amends s. 420.5087, F.S., 1998 Supplement, to authorize the Florida Housing Finance Corporation to establish, by rule, 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.

Section 8 provides that except for section 2, the act becomes effective July 1, 1999.

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

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By expanding the charitable tax exemption, the bill potentially has the effect of reducing local revenue-raising authority. While the bill's total fiscal impact is indeterminate, it is likely to be insignificant. Unless it is determined that the estimated total local government revenue loss from this bill is \$1.4 million or more, the measure appears to be exempt from the requirements of subsection (b) due to insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This bill potentially expands the charitable property tax exemption, thereby reducing the property tax base for local governments. While indeterminate, it is anticipated that fiscal impact will be insignificant.

The bill creates a program that commits \$5 million in state corporate tax credits annually for five years to qualified housing projects.

B. Private Sector Impact:

Developers and providers of low-income housing will benefit to the extent they qualify for the charitable tax exemption, the tax credits offered under the proposed State Housing Tax Credit program, or the funds offered through the existing HOME, LIHTC, or SAIL programs.

C. Government Sector Impact:

The FHFC will incur additional responsibilities in administering the proposed State Housing Tax Credit program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1998, Congress increased the Federal tax exempt bond allocation from \$50 to \$75 per person. Twenty-five percent of these bonds are set aside for affordable housing. In addition, legislation has been introduced in Congress to increase the per capita allocation of LIHTC funds from \$1.25 to \$1.75, which means that the State of Florida would be eligible to distribute over \$26 million in Federal Tax Credits for FY2000-2001. Officials from the FHFC note that there is more than enough demand for these new and proposed funds for affordable housing programs.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
