

1 SB379  
2 157504-6  
3 By Senator Waggoner  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 20-FEB-14

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8 SYNOPSIS: This bill would provide further for  
9 appraisals of the fair and reasonable market value  
10 of rented or leased Class II real property  
11 constituting affordable rental housing.

12 This bill would provide that appraisals for  
13 Class II property restricted either by law or by a  
14 restrictive covenant that runs with the land would  
15 be required to take into account the net operating  
16 income attributable to the property based on the  
17 restrictions, utilizing capitalization rates  
18 annually determined by the Department of Revenue.

19 This bill would provide that, for ad valorem  
20 tax appraisal purposes, the impact on fair and  
21 reasonable market value of Class II property of  
22 legal restrictions and binding covenants of record  
23 on occupancy and rentals with respect thereto shall  
24 be considered by tax assessors, boards of  
25 equalization, and others charged with appraisal of  
26 property for ad valorem tax purposes, and that the  
27 value of any tax credit becoming available as a

1 result of the restrictions would not be considered  
2 in the appraisal except in certain circumstances.

3 This bill would clarify the ad valorem tax  
4 status of the tax credits.

5 This bill would require the Department of  
6 Revenue to promulgate rules for its implementation.

7  
8 A BILL

9 TO BE ENTITLED

10 AN ACT

11  
12 Relating to the ascertainment of the fair and  
13 reasonable market value for ad valorem tax purposes of certain  
14 Class II property; to provide that appraisals of the fair and  
15 reasonable market value for ad valorem tax purposes of rented  
16 or leased Class II real property the occupancy or rentals for  
17 which are restricted by law or restrictive covenant running  
18 with the land by reason of the use of such property in  
19 providing affordable rental housing in the State of Alabama  
20 shall be ascertained, as of October 1 of each year, commencing  
21 with the ad valorem tax year commencing October 1, 2014,  
22 taking into account the actual net operating income  
23 attributable to the property for the then immediately  
24 preceding year, capitalized at market value capitalization  
25 rates for such year to be determined annually by the  
26 Department of Revenue pursuant to certain criteria set forth  
27 in and consistent the purposes of this act; to provide that

1 every county tax assessor or other county or state officer  
2 charged with the duty of assessing property for ad valorem tax  
3 purposes, as well as each county board of equalization and  
4 each agent of the Department of Revenue, in forming judgments  
5 as to the proper appraisal of the fair and reasonable market  
6 value of such Class II real property, would be required to  
7 consider the impact on the value of all applicable legal  
8 restrictions and restrictive covenants of record on the  
9 occupancy and rentals thereof, and would be prohibited from  
10 considering the value of federal or state income tax credits  
11 utilized in connection with such restrictions by any person or  
12 persons other than the person or persons in whom title shall  
13 vest and required to make return of the property for ad  
14 valorem tax purposes, nor the replacement cost approach to the  
15 appraisal of such Class II property except in cases where the  
16 value produced by such an approach is less than the value  
17 produced by the income approach for the property and deemed  
18 reflective of the fair and reasonable market value thereof; to  
19 require the Department of Revenue annually to determine  
20 capitalization rates for use by county tax assessors or other  
21 county or state officers charged with the duty of assessing  
22 property for ad valorem tax purposes, as well as by county  
23 boards of equalization and agents of the Department of  
24 Revenue, in making appraisals of such Class II property taking  
25 into account the net operating income therefrom; and to  
26 promulgate rules consistent with this act and for its  
27 implementation, and to provide for the application of certain

1 of the act's provisions to the final determination of  
2 appraisals of such Class II property as shall not, as of its  
3 effective date, become final and unappealable.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. (a) The Legislature finds and determines  
6 that there exists in the state a significant shortage of  
7 adequate housing for individuals and families of lower or  
8 moderate incomes, that existing public or  
9 governmental-financed housing does not and cannot meet the  
10 vital public need therefor and that the most effective and  
11 efficient way to address the problem of inadequate and  
12 insufficient affordable housing for persons and families of  
13 low or moderate incomes is through the various programs  
14 encouraging private enterprise and the commitment of private  
15 capital funds for the development and maintenance of  
16 affordable housing, including, specifically, those programs  
17 that encourage the provision of affordable rental housing as  
18 defined herein.

19 (b) The Legislature further declares that it is the  
20 policy of this state to encourage the use in the state of  
21 private enterprise or private capital programs in order to  
22 meet this vital public need and to remove such economic  
23 impediments to those programs for the provision of affordable  
24 rental housing as may exist in respect of property tax burdens  
25 that would have the effect of discouraging the development and  
26 maintenance thereof. Among these impediments is the failure,  
27 which the Legislature finds to exist, of both the Department

1 of Revenue and a significant number of ad valorem taxing  
2 authorities in the state to develop, utilize, and take into  
3 account appropriate methods for the ascertainment of the fair  
4 and reasonable market value of real properties constituting  
5 affordable rental housing, which properties fall only within  
6 Class II, as defined in Section 217 of the Constitution of  
7 Alabama of 1901, as amended, for purposes of ad valorem  
8 property tax assessment, that are reflective of the effect on  
9 fair and reasonable market value of the restrictions placed by  
10 law or restrictive covenant on such properties.

11 (c) In addition to the negative effect of such  
12 failures that the Legislature finds to exist on the provision  
13 of adequate and affordable housing for persons of low and  
14 moderate incomes in the state, the Legislature finds and  
15 determines that the resulting inconsistencies in valuation for  
16 property tax purposes of similarly restricted properties from  
17 county to county do not accord with the requirements for  
18 uniformity and equalization of ad valorem taxation expressed  
19 in the Constitution and laws of the state.

20 (d) Therefore, the purpose of this act is to ensure  
21 the consideration by taxing authorities of those methods of  
22 property valuation and such other matters as are herein  
23 provided for in ascertaining, for ad valorem tax purposes, the  
24 fair and reasonable market value of Class II real properties  
25 throughout the state constituting affordable rental housing,  
26 all to the end that the provision of adequate and affordable  
27 rental housing, for persons of low or moderate incomes in the

1 state shall not be discouraged through the imposition of  
2 higher taxes and that the ascertainment of the fair and  
3 reasonable market values of such properties for ad valorem tax  
4 purposes, reflective of those legal restrictions and covenants  
5 of record as may be applicable thereto, shall be carried out  
6 uniformly statewide by the tax assessors, county boards of  
7 equalization, and agents of the Department of Revenue  
8 throughout the state.

9 Section 2. As used in this act, the following words  
10 and phrases shall have the following meanings:

11 (1) AFFORDABLE RENTAL HOUSING. Class II property as  
12 described in Section 217 of the Constitution of Alabama of  
13 1901, as amended, consisting of one or more rental housing  
14 units, including the land on which the same shall be located  
15 in respect of which the construction of improvements thereon  
16 or the rental thereof, or both, are subject to or restricted  
17 by the provisions of either Section 42 of the Internal Revenue  
18 Code, 26 U.S.C. §42, the Home Investment Partnership Program  
19 under the Cranston-Gonzalez National Affordable Housing Act,  
20 42 U.S.C. §12741 et seq., or the Federal Home Loan Bank  
21 Affordable Housing Program established pursuant to the  
22 Financing Institutions Reform, Recovery and Enforcement Act of  
23 1989, Public Law 101-73, or any other federal, state, or other  
24 program similar thereto, whether presently in existence or  
25 hereafter implemented, intended to make available affordable  
26 housing to persons of low or moderate incomes, the occupancy  
27 of or rental rates for which are restricted pursuant to one or

1 more property rental restrictions based upon the incomes of  
2 the persons occupying such housing or the incomes of persons  
3 generally residing within the area in which the affordable  
4 rental housing is located; provided, however, that for  
5 purposes of this act, the term affordable rental housing shall  
6 not include properties receiving direct assistance from the  
7 federal government or one of its agencies in the form of  
8 payment of market rents under the Section 8 Project-Based  
9 Housing Assistance Program described in 42 U.S.C. §1437f.

10 (2) PROPERTY RENTAL RESTRICTION. A restriction,  
11 covenant, or limitation that specifies or provides for either  
12 or both of the maximum income of residents of, or the maximum  
13 rental rates that may be charged for, rental units  
14 constituting affordable rental housing that shall continue in  
15 effect by the terms thereof for a period of not less than  
16 seven years from the later of the date of a. the initial  
17 imposition of the restriction, b. the date the covenant  
18 becomes operative, or c. the date of initial occupancy of such  
19 rental units, and that is imposed by or pursuant to any of the  
20 following:

21 1. A binding agreement with the United States or the  
22 State of Alabama or with a federal or state government agency  
23 or public corporation entered into by the owner or owners of a  
24 parcel or parcels of Class II real property constituting  
25 affordable rental housing, which agreement limits the  
26 occupancy of and rental rates for constituent rental units  
27 thereof.



1           2. A restrictive covenant or agreement recorded in  
2 the applicable land records of the county in which Class II  
3 real property constituting or which is or is to be located  
4 affordable rental housing.

5           3. Applicable federal or state law or any rule or  
6 regulation adopted pursuant thereto.

7           Section 3. (a) For the ad valorem tax year  
8 commencing October 1, 2014, and for each such tax year  
9 thereafter, in ascertaining and determining the fair and  
10 reasonable market value for ad valorem tax purposes of each  
11 parcel of Class II real property constituting affordable  
12 rental housing, every county tax assessor or other county or  
13 state officer charged with the duty of assessing property for  
14 ad valorem tax purposes, as well as each county board of  
15 equalization and agent of the Department of Revenue, shall  
16 determine, take into account, and give due consideration to  
17 the actual income attributable to each such property,  
18 capitalized at such market value capitalization rate as shall  
19 be determined annually by the Department of Revenue reflecting  
20 the prevailing cost of equity capital for commercial real  
21 estate in the state as evidenced by capitalization rates  
22 produced by actual sales of multifamily rental property,  
23 adjusted for the adverse effect on fair and reasonable market  
24 value created by any property rental restriction, including  
25 any resultant reduction in net operating income from the  
26 property. In making such ascertainment and determination there  
27 shall not be taken into consideration the value of government

1 grants or subsidies, such as below market rate mortgage  
2 financing and income tax credits, where such subsidies are or  
3 have been used to offset the costs of land acquisition,  
4 building, or construction costs of, or operating expenses  
5 relating to, affordable rental housing in order to allow the  
6 rental units thereof to be rented to those persons to whom the  
7 property's rental is restricted by law or covenant as herein  
8 described at the restricted rents allowed to be charged  
9 pursuant to the property rental restrictions applicable to the  
10 property.

11 (b) In order to assist county tax assessors and  
12 other county or state officers charged with the duty of  
13 assessing property for ad valorem tax purposes, as well as  
14 county boards of equalization and agents of the Department of  
15 Revenue, in carrying out the requirements of subsection (a),  
16 for the ad valorem tax year commencing on October 1, 2014, and  
17 for each such year thereafter, the owner of any Class II real  
18 property constituting affordable rental housing required to  
19 return the property for ad valorem taxation shall provide to  
20 the county tax assessor or revenue commissioner or other  
21 person charged by law with determining the value of property  
22 for ad valorem tax purposes, on or before October 1 of each  
23 year, in connection with the return of such real property for  
24 taxation as of such October 1, an accurate and complete  
25 statement of the actual gross and net operating income  
26 attributable to such Class II real property for the period of  
27 the then immediately preceding tax year, prepared in

1 accordance with generally accepted accounting principles,  
2 along with a sworn statement as to the value of government  
3 grants or subsidies, such as below market rate mortgage  
4 financing and income tax credits, allocated or granted in  
5 respect of the property, which statement shall show the amount  
6 or amounts of such subsidies actually used to offset costs of  
7 land acquisition, building, or construction costs of or  
8 operating expenses related to affordable rental housing in  
9 order to allow the rental units thereof to be rented to those  
10 persons to whom the property's rental is restricted by law or  
11 covenant at the restricted rents allowed to be charged  
12 pursuant to the property rental restrictions applicable to the  
13 property.

14 Section 4. In ascertaining and determining, as of  
15 October 1, 2014, and as of October 1 of each ad valorem tax  
16 year thereafter, for ad valorem tax purposes the fair and  
17 reasonable market value of Class II real property consisting  
18 of affordable rental housing, the value of any federal or  
19 state income tax credits awarded or made available on account  
20 of or in connection with restrictions on the maximum rental  
21 that may be paid respecting or the persons to whom the  
22 affordable rental housing units located on the property may be  
23 rented, shall not be considered as part of the value of the  
24 property for ad valorem tax purposes nor as income from the  
25 property for purposes of the use of the income approach to  
26 determining valuation as described in Section 3, nor as  
27 revenue in the calculation of net operating income for the

1 purposes of this act, except in cases where such credits are  
2 directly utilized, by the person or persons in whom title to  
3 the affordable rental housing shall vest and who shall be  
4 required to make return of the property for ad valorem tax  
5 purposes, to offset federal or state income taxes otherwise  
6 due to be paid by such person or persons.

7 Section 5. The Department of Revenue shall annually  
8 determine prior to October 1, 2014, and October 1 of each ad  
9 valorem tax year thereafter, and make available to county tax  
10 assessors, revenue commissioners, other persons charged by law  
11 with determining the value of property for ad valorem tax  
12 purposes, and boards of equalization annual capitalization  
13 rates for use in ascertaining and determining the fair and  
14 reasonable market value of Class II real property constituting  
15 affordable rental housing as required by this act, and the  
16 department shall adopt, and may amend or repeal, consistent  
17 with the provisions hereof, such rules and regulations as  
18 shall be consistent with and as may be necessary or convenient  
19 to the implementation of this act in accordance with the  
20 requirements of the Alabama Administrative Procedure Act as  
21 and to the extent required hereby.

22 Section 6. This act shall apply in respect of all  
23 assessments for ad valorem tax purposes of Class II real  
24 property constituting affordable rental housing to be made as  
25 of October 1, 2014, and for such assessments made as of each  
26 October 1 thereafter, but the provisions of Section 4 shall  
27 also be applicable and shall be utilized in respect of the

1 judicial or administrative ascertainment pursuant to an appeal  
2 of the fair and reasonable market value for ad valorem tax  
3 purposes of any parcel of Class II real property constituting  
4 affordable rental housing as of any October 1 prior to October  
5 1, 2014, a determination of the appraised value of which for  
6 ad valorem tax purposes has not, as of the effective date  
7 hereof, become final and unappealable.

8 Section 7. The provisions of this act are severable.  
9 If any part of this act is declared invalid or  
10 unconstitutional, that declaration shall not affect the part  
11 which remains.

12 Section 8. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.