

1 HB13  
2 154565-1  
3 By Representative Robinson (O)  
4 RFD: Commerce and Small Business  
5 First Read: 14-JAN-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. Appraisals  
12 for any such Class II property having a restriction  
13 either by law or by a restrictive covenant that  
14 runs with the land would be required to take into  
15 account the net operating income attributable to  
16 the property based on such restrictions, utilizing  
17 capitalization rates annually determined by the  
18 Department of Revenue.

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

1 becoming available as a result of such restrictions  
2 would not be considered in the appraisal unless  
3 retained by the legal owner of such Class II  
4 property.

5 This bill would also clarify the ad valorem  
6 tax status of such tax credits and require the  
7 Department of Revenue to promulgate rules for its  
8 implementation.

9  
10 A BILL  
11 TO BE ENTITLED  
12 AN ACT

13  
14 Relating to the ascertainment of the fair and  
15 reasonable market value for ad valorem tax purposes of certain  
16 Class II property; to provide that the appraisal of the fair  
17 and reasonable market value for ad valorem tax purposes of  
18 rented or leased Class II real property the occupancy or  
19 rentals for which are restricted by law or restrictive  
20 covenant running with the land by reason of the use of such  
21 property in providing affordable rental housing in the State  
22 of Alabama shall be ascertained, as of October 1 of each year,  
23 commencing with the ad valorem tax year commencing October 1,  
24 2013, taking into account the actual net operating income  
25 attributable to the property for the then immediately  
26 preceding year, capitalized at a market value capitalization  
27 rate for such year to be determined annually by the Department

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

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 (b) The Legislature further declares that it is the  
16 policy of this state to encourage the use in the state of  
17 private enterprise or private capital programs in order to  
18 meet this vital public need and to remove such economic  
19 impediments to them as may exist in respect of property tax  
20 burdens that would have the effect of discouraging the  
21 development and maintenance of affordable rental housing.  
22 Among these impediments is the failure, which the Legislature  
23 finds to exist, of both the Department of Revenue and a  
24 significant number of ad valorem taxing authorities in the  
25 state to develop, utilize, and take into account appropriate  
26 methods for the ascertainment of the fair and reasonable  
27 market value of real properties constituting affordable rental

1 housing, which properties fall only within Class II, as  
2 defined in Section 217 of the Official ReCompilation of the  
3 Constitution of Alabama of 1901, as amended, for purposes of  
4 ad valorem property tax assessment, that are reflective of the  
5 effect on fair and reasonable market value of the restrictions  
6 placed by law or restrictive covenant on such properties.

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

16 (d) Therefore, the purpose of this act is to require  
17 the consideration by taxing authorities of those methods of  
18 valuation and such matters as are herein provided for in  
19 ascertaining, for ad valorem tax purposes, the fair and  
20 reasonable market value of Class II real properties throughout  
21 the state constituting affordable rental housing, all to the  
22 end that the provision of adequate and affordable housing for  
23 persons of low income in the state shall not be discouraged  
24 and that the ascertainment of the fair and reasonable market  
25 values of such properties for ad valorem tax purposes,  
26 reflective of such legal restrictions and covenants of record  
27 as may be applicable thereto, shall be carried out statewide

1 by tax assessors, county boards of equalization, and agents of  
2 the Department of Revenue on a more uniform basis throughout  
3 the state.

4 Section 2. As used in this act, the following words  
5 and phrases shall have the following respective meanings:

6 (1) AFFORDABLE RENTAL HOUSING. A residential housing  
7 structure and the land on which it is located, which consists  
8 of one or more rental housing units for which the construction  
9 or rental, or both, are subject to the provisions of Section  
10 42 of the Internal Revenue Code (26 U.S.C. §42), the Home  
11 Investment Partnership Program under the Cranston-Gonzalez  
12 National Affordable Housing Act (42 U.S.C. §12741 et seq.),  
13 the Federal Home Loan Bank Affordable Housing Program  
14 established pursuant to the Financial Institutions Reform,  
15 Recovery and Enforcement Act of 1989 (Public Law 101-73), or  
16 any other federal, state, or other program similar to those  
17 described in the aforesaid provisions of law, whether  
18 presently in existence or hereafter implemented, intended to  
19 make available affordable housing to persons of low or  
20 moderate income, the occupancy of or rental rates for which  
21 are restricted pursuant to one or more property rental  
22 restrictions based upon the incomes of persons occupying such  
23 housing or the incomes of persons generally residing within  
24 the area in which the affordable housing is located.

25 (2) PROPERTY RENTAL RESTRICTION. A restriction or  
26 limitation that specifies or provides for the maximum income  
27 of residents of or the maximum rental rates that may be

1 charged, or both, for rental units located on Class II real  
2 property constituting affordable rental housing for a period  
3 of not less than seven years. A property rental restriction or  
4 limitation may be imposed by any of the following:

5 a. A binding agreement with the United States or the  
6 State of Alabama or with a federal or state government agency  
7 or public corporation entered into by the owner or owners of a  
8 parcel or parcels of Class II real property constituting or on  
9 which is located affordable rental housing, which agreement  
10 limits the occupancy of and rental rates for constituent  
11 rental units thereof.

12 b. A restrictive covenant or agreement recorded in  
13 the applicable land records of the county in which Class II  
14 real property constituting or on which is located affordable  
15 rental housing.

16 c. Applicable federal or state law or any rule or  
17 regulation adopted pursuant thereto.

18 Section 3. (a) For the ad valorem tax year  
19 commencing October 1, 2013, and for each such tax year  
20 thereafter, in ascertaining the fair and reasonable market  
21 value for ad valorem tax purposes of each parcel of Class II  
22 real property constituting affordable rental housing, every  
23 county tax assessor or other county or state officer charged  
24 with the duty of assessing property for ad valorem tax  
25 purposes, as well as each county board of equalization and  
26 agent of the Department of Revenue, shall determine, take into  
27 account, and give due consideration to the actual income



1       attributable to each such property, capitalized at such market  
2       value capitalization rate as shall be determined annually by  
3       the Department of Revenue reflecting the prevailing cost of  
4       capital for commercial real estate in either the state or the  
5       portion of the state generally surrounding the area designated  
6       by the department in which the Class II real property is  
7       located, adjusted for the adverse effect on fair and  
8       reasonable market value created by any property rental  
9       restriction, including any resultant reduction in net  
10      operating income from the property. In making such  
11      determination and appraisal there shall not be taken into  
12      consideration the value of government grants or subsidies,  
13      such as below market rate mortgage financing and income tax  
14      credits, where such subsidies are or have been used to offset  
15      land acquisition, building, or construction costs of or  
16      operating expenses relating to affordable rental housing in  
17      order to allow the rental units thereof to be rented to those  
18      persons to whom the property's rental is restricted by law or  
19      covenant as herein described at the restricted rents allowed  
20      to be charged pursuant to the property rental restrictions  
21      applicable to the property.

22               (b) In order to assist county tax assessors, other  
23      county or state officers charged with the duty of assessing  
24      property for ad valorem tax purposes, as well as county boards  
25      of equalization and agents of the Department of Revenue, in  
26      carrying out the requirements of subsection (a), commencing on  
27      October 1, 2013, the owner of any Class II real property

1 constituting affordable rental housing required to return the  
2 property for ad valorem taxation shall provide to the county  
3 tax assessor or revenue commissioner on or before October 1 of  
4 each year, commencing October 1, 2013, in connection with the  
5 return of such real property for taxation as of such October  
6 1, an accurate and complete statement of the actual gross and  
7 net operating income attributable to such Class II real  
8 property for the period of the immediately preceding tax year,  
9 prepared in accordance with generally accepted accounting  
10 principles, along with a sworn statement as to the value of  
11 government grants or subsidies, such as below market rate  
12 mortgage financing and income tax credits allocated or granted  
13 in respect of the property and showing the amount or amounts  
14 of such subsidies actually used to offset land acquisition,  
15 building, or construction costs of or operating expenses  
16 related to affordable rental housing in order to allow the  
17 rental units thereof to be rented to those persons to whom the  
18 property's rental is restricted by law or covenant at the  
19 restricted rents allowed to be charged pursuant to the  
20 property rental restrictions applicable to the property.

21 Section 4. In ascertaining, as of October 1, 2013,  
22 and as of October 1 of each year thereafter, for ad valorem  
23 tax purposes the fair and reasonable market value of Class II  
24 real property consisting of affordable rental housing, the  
25 value of any federal or state income tax credits awarded or  
26 made available on account of or in connection with  
27 restrictions on the maximum rental that may be paid for or the

1 persons to whom the affordable rental housing units located on  
2 the property may be rented, shall not be considered as part of  
3 the value of the property for ad valorem tax purposes nor as  
4 income from the property for purposes of the use of the income  
5 approach to valuation as described in Section 3, nor as  
6 revenue in the calculation of net operating income for the  
7 purposes of this act except where such credits are directly  
8 utilized by the legal owner of the affordable rental housing.

9 Section 5. The Department of Revenue shall annually  
10 determine prior to October 1, 2013 and October 1 of each year  
11 thereafter, and make available to county tax assessors,  
12 revenue commissioners, and boards of equalization annual  
13 capitalization rates for use in ascertaining the fair and  
14 reasonable market value of Class II real property constituting  
15 affordable rental housing as required by this act and shall  
16 adopt, and may amend or repeal, such rules as may be necessary  
17 or convenient to the implementation of this act in accordance  
18 with the requirements of the Alabama Administrative Procedure  
19 Act as and to the extent required hereby.

20 Section 6. This act applies in respect of  
21 assessments for ad valorem tax purposes of Class II real  
22 property constituting affordable rental housing made as of  
23 October 1, 2013, and for such assessments made as of each  
24 October 1 thereafter, but the provisions of Section 4 shall  
25 also be applicable and shall be utilized in respect of the  
26 judicial ascertainment pursuant to an appeal of the fair  
27 reasonable market value for ad valorem tax purposes of any

1 parcel of Class II real property constituting affordable  
2 rental housing as of any October 1 prior to October 1, 2013, a  
3 determination of the appraised value of which for ad valorem  
4 tax purposes has not, as of the effective date hereof, become  
5 final and unappealable.

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

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