COMMITTEE REPORT

May 18, 2011

**H. 3676**

Introduced by Reps. J.E. Smith, Clemmons, Dillard, Herbkersman, Limehouse and Mitchell

S. Printed 5/18/11--H. [SEC 5/19/11 3:11 PM]

Read the first time February 15, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3676) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 23 to Title 31 so as to enact the “South Carolina Community Land Trust Act of 2011”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking Section 31-23-40(C) before the first item, on page 4, lines 40 and 41, and inserting:

/ (C) The bylaws of a CLT shall provide, at a minimum, that: /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 23 TO TITLE 31 SO AS TO ENACT THE “SOUTH CAROLINA COMMUNITY LAND TRUST ACT OF 2011”, TO DEFINE TERMS, MAKE FINDINGS, TO PROVIDE THAT THE PURPOSE OF A COMMUNITY LAND TRUST IS TO HOLD LEGAL AND EQUITABLE TITLE TO LAND TO THEN LEASE THE LAND TO PROMOTE AFFORDABILITY, TO PROVIDE THE MANNER IN WHICH COMMUNITY LAND TRUSTS ARE FUNDED, AND TO PROVIDE THE PROCESS BY WHICH COMMUNITY LAND TRUSTS OPERATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 31 of the 1976 Code is amended by adding:

“CHAPTER 23

South Carolina Community Land Trust

Section 31‑23‑10. This chapter shall be known and may be cited as the ‘South Carolina Community Land Trust Act of 2011’.

Section 31‑23‑20. Unless a different meaning clearly appears from the context, as used in this chapter:

(1) ‘Affordable’ or ‘Affordability’ means, with respect to dwelling units for sale, the mortgage amortization, taxes, insurance and condominium or association fees, if any, or, with respect to dwelling units for rent, the rent and utilities that constitute no more than thirty percent of the annual household income for low or moderate income households, adjusted by household size, for the metropolitan statistical area in which the rental dwelling unit is located, as published from time to time by the United States Department of Housing and Urban Development (HUD).

(2) ‘Board of directors’ means the governing body of a CLT duly elected and constituted in accordance with the bylaws of such organization.

(3) ‘Community land trust (CLT)’ means either:

(a) a wholly owned nonprofit subsidiary of an existing housing development and support organization that has received an exemption from the Internal Revenue Service (IRS) under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(b) a member‑based, nonprofit housing development and support organization organized and existing under the laws of the State of South Carolina, either of which entities meets the requirements of this chapter. As soon after its incorporation as is practicable, a member‑based CLT must make application to the IRS for a determination that it is an entity described in Section 501(c) of the Internal Revenue Code of 1986, as amended, and shall be prohibited from either soliciting or accepting contributions of any kind from any person, firm, or corporation other than its organizers unless and until notice of the determination has been received from the IRS.

(4) ‘First option to purchase’ means the right of a CLT to purchase, at a formula‑determined price, any improvements, leasehold interests or any other interests of a lessee of property the underlying title of which is vested in the CLT, or which is the subject of restrictive covenants as to continued affordability, which covenants are enforceable by the CLT.

(5) ‘Formula‑determined price’ means a price determined by means of a predetermined calculation which is contained in a ground lease between a CLT and a lessee which is related to the resale price of any building or other improvements situated on land owned by a CLT or encumbered with a covenant enforceable by a CLT and is intended to maintain the affordability of the building or other improvements.

(6) ‘Housing development and support organization’ means a nonprofit organization that has the ability under its articles of incorporation and bylaws to:

(a) acquire parcels of land for use as affordable housing with the intention of entering into long‑term ground leases;

(b) convey ownership of any structural improvements located on such leased parcels to various lessees;

(c) retain a preemptive option to purchase any such improvements at a formula‑determined price; and

(d) provide organizational support, technical assistance, education, training and community support to its members. With regard to properties subject to horizontal property regimes, a housing development support organization may impose restrictive covenants upon dwelling units that it owns in order to ensure that the dwelling units remain affordable to low‑income and moderate‑income households.

(7) ‘Leasehold interest’ means the interest of a lessee under a ground lease.

(8) ‘Low‑income’ means aggregate household income at or below eighty percent of the area median income, as determined by HUD.

(9) ‘Member‑based’ means an organization the membership of which is open to all adult residents of the geographic area served by the organization, and that the members of the organization’s board of directors is directly elected by the membership as provided in the bylaws of the organization.

(10) ‘Moderate‑income’ means aggregate household income between eighty percent and one hundred and twenty percent of area median income, as determined by HUD.

(11) ‘Predominantly’ means at least seventy percent.

(12) ‘Public funding’ means financial resources provided by a federal, state, regional, or local governmental organization or by a local or regional housing trust fund or housing authority.

(13) ‘Public support’ means nonfinancial resources that may include donated land or the conveyance of publicly owned property or the assignment of the first right to purchase reduced price housing units obtained from a private developer as a result of local government regulatory mandates or incentives.

Section 31‑23‑30. The General Assembly finds:

(1) A shortage of adequate and affordable housing providing permanent domiciles with adequate privacy, space, physical accessibility, security, structural stability and durability, and adequate electrical, plumbing, and heating systems, continues to persist in South Carolina.

(2) The public’s health, safety, and economic interests of the State and its citizens are best served by promoting permanently affordable housing in healthy vital neighborhoods.

(3) Affordable housing enables South Carolinians to maintain employment, makes it more likely that our children will succeed in school and helps our economic growth and prosperity.

(4) New organizational mechanisms can assist in stabilizing property values and preventing neighborhoods and communities from becoming blighted.

(5) Homeownership is a worthy goal for many South Carolina families of low and moderate income and many families require supportive homeownership services in order to obtain and retain their family homes.

(6) The creation and operation of community land trusts will provide a mechanism for privately or publicly funded community organizations to own real estate in order to make the benefits of affordable housing available to those who could not otherwise afford them.

Section 31‑23‑40. (A) A CLT must have as its primary purpose to hold legal and equitable title to land and the leasing of land for the purpose of preserving the long‑term affordability of housing created for predominately low income and moderate income households. When the CLT does not own the underlying land in a setting such as a horizontal property regime, it shall maintain the affordability of resale restricted condominiums or other forms of affordable housing by means of an affordability covenant incorporated within or otherwise made a part of the deed to one or more dwelling units within the regime. Among its purposes may be the ability to undertake neighborhood development of a nonresidential nature that is ancillary to and compliments and supports affordable housing. A CLT may include among its purposes the acquisition of property for future development as permitted under this chapter. A CLT shall have all of the powers granted to corporations, including the power to buy and sell land and structures, to mortgage and otherwise encumber land and structures and to enter into renewable or self‑extending ground leases, restrictive covenants, and collateral agreements with an initial term of up to ninety‑nine years.

(B) A CLT organized pursuant to this chapter is eligible to receive public funding and public support from any unit of municipal, county, regional, state, or federal government.

(C) The bylaws of a CLT described in Section 31‑21‑20(c)(ii) shall provide, at a minimum, that:

(1) the organization must be open to members of the general public who support the organization’s goals and purposes;

(2) the organization must be a member‑based organization;

(3) that within four years of its incorporation, a majority of the members of its board of directors shall be lessees of the CLT; and

(4) the organization shall provide for the distribution of its assets upon dissolution, subject to any leases, mortgages, and other encumbrances thereon, to either a municipal corporation or a nonprofit organization that shares the purposes of the CLT and has received a determination under Section 501(c)(3) from the IRS.

(D)(1) A CLT may hold title to land and lease land predominately to members of low income or moderate income households, or other corporations or partnerships, provided the terms of any ground lease shall give the CLT the first option to repurchase any building or improvement placed on the land, or any portion thereof, at a formula‑determined price set forth in the ground lease. Aggregate household income shall be determined at the time the lessee enters into a ground lease with the CLT.

(2) A CLT may charge a lease fee to the lessee. The fee must be determined by the CLT and may include property taxes and any governmental or other assessments made on the land, an administrative fee, and a land use fee. The method of determining the lease fee must be set forth in the ground lease. Nothing in this section shall prohibit a state, local, other funding agency, or a lender from placing in escrow all or part of the lease fee.

(3) A ground lease between a CLT and a lessee shall include provisions designed to preserve long‑term affordable housing on the land. The provisions may include, but shall not be limited to, a first option to purchase and a specification of restrictions on the resale, subletting, or assignment of improvements on the land. The provisions shall not be subject to any general statute or rule of law limiting the duration, degree, or nature of restraints on real property, including, but not limited to, the common law rule against perpetuities, the Uniform Statutory Rule Against Perpetuities, and the rule against unreasonable restraints on alienation.

(4) A lessee’s interest in a ground lease with a CLT shall constitute an interest in real property. Any loan made to the lessee may be secured by the lessee’s leasehold interest in the same manner as any other loan secured by real property.

(5) Real property taxes shall be apportioned in the ground lease between the landowner, or CLT and the lessee. Each party shall be responsible for the taxes on the property that it owns, although the CLT may include property taxes on the land in the lease fee that is charged to the lessee. The lessor shall be responsible for the taxes and assessment on the land. The lessee shall be responsible for the taxes and assessments on all improvements made on the land.

(E) A CLT shall enter into a written lease agreement with the lessee containing the terms by which the land is leased. In addition to provisions designed to preserve the long‑term affordability of housing and other improvements on the land, this written agreement must comply with the following:

(1) the duration of the lease must be stated in the agreement and may be of any length agreed upon between the CLT and lessee;

(2) if the agreement provides an option for renewal, the amount of lease fee to be paid for the lease of the land during the renewal period must be stated in the agreement. The provision may include a formula for determining the amount to be paid by the lessee during the renewal period; and

(3) the lease agreement must specify the location and approximate size of the parcel of land to be leased, the annual and monthly ground rent, the administrative fee, a statement of amounts to be paid by the lessee including, but not limited to, taxes and assessments, security deposits, service fees, utility fees, and installation charges, the date payment is due, the place of payment, the personal property, services, and facilities provided by the CLT, the regulations governing residency which, if violated, may be cause for cancellation of the lease, the improvements, if any, which the lessee may make to the leased land including landscaping, the improvements, if any, required to be made by the lessee, restrictions, if any, regarding pets, children, number of occupants, and vehicles and other personal property storage, the lessor’s right to inspect the property, and the notice required to exercise any option for renewal or to terminate the ground lease.

(F) Land that is owned by a CLT, and buildings that are rented, sold or leased by a CLT subject to, or planned to be leased subject to, long‑term rent or resale restrictions designed to ensure such buildings will remain affordable to low income or moderate income households for at least thirty years, shall be appraised, assessed, and taxed in accordance with the requirements of this section. The assessor must use the income approach as the method of valuation for the land classified under this section and must take resale and rent restrictions that apply to the buildings into consideration in determining the taxable value of this land. The assessor must base the assessment of the property upon the actual income generated by the property and may not take into consideration in reaching a decision the amount of any federal or state income tax credits received by the property’s developer in determining the taxable value attributable to the land and buildings. Affordable housing offered for rent or sale by the CLT, encumbered with rent or resale restrictions designed to ensure their affordability for low income or moderate income households, must be eligible for any homestead exemptions provided by law.

(G) Properties purchased, sold, or repurchased and resold by a CLT, including properties held in a CLT, must be assessed the real estate deed recording fee only once per transfer at the time of the resale to a homebuyer.

Section 31‑23‑50. The provisions of this chapter shall control where inconsistent with the provisions of another law.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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