

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 12-01 Property Tax Oversight

SPONSOR(S): Finance & Tax Committee

TIED BILLS: **IDEN./SIM. BILLS:** SPB 7036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge	Langston

SUMMARY ANALYSIS

The proposed bill contains recommendations by the Department of Revenue for property tax oversight improvements. Among other things, the bill clarifies ambiguous language, deletes obsolete statutory provisions, and eliminates unneeded reporting requirements in the property tax statutes. The bill also:

- Amends statutory requirements for scheduling value adjustment board hearings.
- Allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government.
- Amends the current order that property tax exemptions are to be applied to require that the exemptions be applied in a manner that results in the lowest taxable value.
- Requires the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county that informs taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission.
- Amends s. 196.199(1), F.S., to provide that all property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property, shall be exempt from ad valorem taxation.

Additionally, current law provides that the assessed value of certain nonhomestead property cannot increase by more than 10 percent over the prior year. The law requires such property to be assessed at just value [fair market value] when the property is "placed on the tax roll." The bill clarifies that property is to be assessed at just value when it is subject to a new assessment limitation. The bill also amends these provisions to provide that parcels combined or divided are not to be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. The bill further provides that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Except for the provisions relating to certain exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have no impact on state revenue and will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

The bill takes effect upon becoming law, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Locally elected officials administer Florida's property tax system. The Department of Revenue (Department) is responsible for general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes.¹ In this role, the Department from time to time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. Most of the statutory changes in the bill were suggested by the Department and approved by the Governor and Cabinet, to address these types of issues.

Definitions

Current Situation

Section 192.001, F.S., defines terms used in the statutes imposing ad valorem taxes. Some of these definitions have not been amended to conform to other statutory and constitutional changes.

Proposed Changes

This bill amends the definition of "assessed value of property" to make it consistent with Article VII of the Florida Constitution, as amended in 2008. It also amends the definition of "complete submission of the rolls" to conform to s. 193.114, F.S., as amended in 2008.

Value Adjustment Board Hearing Wait Time Limit

Current Situation

Taxpayers have the right to petition the value adjustment board (VAB) over objections to their property tax assessments, denial of homestead or other property tax exemptions, and appeals concerning property tax deferrals and classifications.² Section 194.032, F.S., outlines the timetable and procedure for VAB hearings. Taxpayers previously were required to exhaust their administrative remedies prior to filing an action in circuit court related to these matters.³ There is a vestige of this prior requirement in s. 194.032, F.S., whereby taxpayers who had waited 4 hours after the scheduled hearing time would be deemed to have exhausted their administrative remedies and thereby be permitted to file an action in circuit court.

Proposed Change

The bill amends the VAB hearing procedure in s. 194.032, F.S., and limits the amount of time a petitioner may be required to wait for his or her hearing after the scheduled time to "a reasonable time, not to exceed 2 hours." If the hearing is not commenced within this time, the petitioner may leave and the clerk shall reschedule the hearing, though this rescheduled hearing is not counted against the

¹ Section 194.011, F.S.

² Sections 194.011 and 194.032, F.S.

³ See *Stiles v. Brown*, 177 So.2d 672 (Fla.App.1965), affirmed 182 So.2d 612 (Fla. 1966) finding that appearance before the Board of Equalization [predecessor of the current VABs] was a necessary "exhaustion of administrative remedies" and a prerequisite to filing a lawsuit. See also Chapter 80-274, L.O.F., which added language now contained in s. 194.034(1)(b), F.S., which legislatively eliminated that prerequisite:

(b) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011.

taxpayer's one-time right to reschedule a hearing for any reason.⁴ The bill also amends the Taxpayer's Bill of Rights in s. 192.0105(2)(d), F.S., to conform to the amendments in s. 194.032, F.S., described here.

Repeal of the Property Tax Administration Task Force

Current Situation

The Property Tax Administration Task Force was created in s. 192.117, F.S., in 2001 for the purpose of serving as a forum for bringing issues in property tax administration to the Department, of providing and evaluating suggestions for improving the property tax administration process, and of promoting greater understanding of property tax administration issues. Under s. 20.03(8), F.S., a task force created by statute can exist for a maximum of three years. Accordingly, this task force was dissolved in 2004, rendering s. 192.117, F.S., obsolete.

Proposed Change

The bill repeals s. 192.117, F.S.

Real Property Assessment Roll Components

Current Situation

Section 193.114(2), F.S., provides a list of items that must be included on the real property assessment roll prepared by the property appraiser. Among these items, paragraph (n) requires the sale price, sale date, and basis for qualification or disqualification for an arms-length transaction for each sale of the property in the previous year to be included on the roll. Paragraph (p), requires the name and address of the owner or fiduciary responsible for the payment of taxes on the property.

Proposed Change

The bill amends s. 193.114(2)(n), F.S., to replace the term "sale price" with "recorded selling price," clarifying that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. "Sale date" is replaced with "ownership transfer date" to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1 year before the assessment date, and up to the date the roll is submitted to the department, must be included on the roll. "Ownership transfer date" is defined as the date that the deed or other transfer instrument is signed and notarized or otherwise executed.

The bill also amends s. 193.114(2)(p), F.S., to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Assessment of Nonhomestead Residential Property; Assessment of Certain Residential and Nonresidential Real Property

Current Situation

Article VII, sections 4(g) and (h) of the Florida Constitution, provide, among other things, that the assessed value of certain nonhomestead property cannot increase more than 10 percent over the prior year. These provisions are implemented in ss. 193.1554 and 193.1555, F.S. Both sections require property to be assessed at just value [fair market value] when the property is "placed on the tax roll." The Department has interpreted this language to apply to situations where property that was already on

⁴ Taxpayers may reschedule their VAB hearing one time for any reason. See section 194.032(2), F.S.

the roll changes classifications, such as from homestead to nonhomestead, although this interpretation is currently being litigated.⁵

Sections 193.1554 and 193.1555, F.S., also govern how such property is assessed when parcels are merged or split. However, they do not specify how an increase in the just value from combining or dividing the parcels should be calculated and apportioned.

Proposed Change

The bill amends ss. 193.1554, F.S., and 193.1555, F.S., to clarify that property is to be assessed at just value when it is subject to a new limitation. The bill also amends these provisions to provide that parcels combined or divided in this section shall not be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. These sections further provide that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Reporting for Certain Tax Liabilities by Tax Collectors

Current Situation

Sections 193.501, 193.503, and 193.505, F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively.⁶ These provisions require repayment of the amount of reduced liability if the qualifying use is not maintained for the required period. Tax collectors must annually report to the Department the amount of repayments made under these sections.

Proposed Change

These provisions are amended removing the reporting requirement.

Notification of Value Adjustment Board's Decision

Current Situation

Section 194.034(2), F.S., provides that when a petitioner challenges a property assessment through the VAB, and the VAB is required to render a written decision, the clerk is required to mail a notification of the decision to various parties, including the Department.

Proposed Change

The bill amends s. 194.034(2), F.S., by removing the clerk's duty to notify the Department of every decision of the board. In place of that requirement, the bill provides that the clerk shall provide a copy of the decision (or information relating to the tax impact of the findings and results as provided in s.194.037, F.S.) to the Department upon the Department's request.

⁵ In December 2010, in *Sommers v. Orange Cnty. Prop. Appraiser*, No. 2010-CA-012489-O (Fla. 9th Cir. Ct. 2010), *pending appeal*, the Ninth Judicial Circuit Court ruled that the Sommers were entitled to the 10 percent assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S. This ruling is being appealed. See Case No. 5D11-240 (Fla. 5th DCA).

⁶ Constitutional authority provided in Art. VII, ss. 3(f) and 4(b).

Department's Review of Assessment Rolls

Current Situation

The Department is required to conduct an in-depth review of the assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county officials.⁷ Statistical sampling used in the review of assessment rolls must meet a 95 percent confidence level. However, in some instances, there is insufficient data to meet the 95 percent confidence level standard.

Section 195.0985, F.S., requires the Department to annually publish sales ratio studies for counties after approving the tax roll assessments in those counties.

Proposed Change

The bill amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the 95 percent confidence level requirement, when a 95 percent level of confidence is not attainable. Instead of being required to forward the findings to the Senate and the House of Representatives committees with oversight responsibilities, the bill directs the Department to publish its findings and notify the legislative staff and county officials that such publication has occurred. Copies of the data and findings will be provided upon request.

This bill also repeals s. 195.0985, F.S., eliminating a redundant requirement.

Department's Review of Assessments for Certain Businesses

Current Situation

Section 195.099, F.S., requires the Department to periodically review the assessments of new, rebuilt, and expanded businesses in designated enterprise zones⁸ or brownfield areas.⁹

Proposed Change

The bill amends this provision to remove the Department's mandatory review requirement and, instead, permits the Department to review these assessments.

Tax Exemption of Homesteads

Current Situation

Section 196.031(7), F.S., specifies the order in which various exemptions are applied to homestead property that is not totally exempt from ad valorem taxation. Under current law, the order of exemptions could result in some properties not being able to take full advantage of all the exemptions.

Proposed Change

The bill amends s. 196.031(7), F.S., to require that the exemptions in this section be applied in a manner that results in the lowest taxable value.

⁷ Section 195.096(2), F.S.

⁸ Section 193.077(3), F.S.

⁹ Section 196.1995, F.S.

Delay in Disability Exemption

Current Situation

Sections 196.081, 196.082, 196.091, 196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. To qualify for these discounts and exemptions, a taxpayer must first provide evidence of the disability by obtaining certification of the disability from specified sources, depending upon the specific discount or exemption, such as the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration; the taxpayer may not receive a discount or exemption until the letter is obtained. In some instances, taxpayers have lost the ability to claim discounts and exemptions because the receipt of the documentation was delayed.

Proposed Change

The bill amends these sections to allow a taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer receiving the necessary documentation. Once the documentation is received by the property appraiser, the exemption is granted back to the date of the original application and a refund of excess tax payments is made. The refund is only permitted for years that are within the normal 4 year statute of limitations for property tax refunds.

Printed Forms for Tax Exemptions

Current Situation

Section 196.121(1), F.S., requires the Department to furnish hard-copy, printed forms to the property appraiser of each county for taxpayers to use when claiming a homestead exemption.

Proposed Change

This bill amends s. 196.121(1), F.S., by removing the requirement that the Department provide printed forms; in its place, the bill provides that the Department shall provide the forms by electronic means or other methods designated by the Department.

Government Property Exemptions from Tax

Current Situation

Section 196.199, F.S., contains the statutory provisions related to exemption from property tax of certain government owned property.

Proposed Change

The bill adds language to s. 196.199(1), F.S., that provides that all property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property, shall be exempt from ad valorem taxation.

Method for Fixing Millage; Notice of Intent to Levy Additional Taxes

Current Situation

Section 200.065, F.S., provides the method for fixing the maximum millage rate that local governments can levy. To determine this maximum rate, the section refers to prior year's rate and sets the cap at the rate that would have been levied in the prior year if the maximum millage rate had been applied, *unless*

*a higher rate is adopted.*¹⁰ In an apparent drafting error, the phrase “is adopted” was used instead of “was adopted” in referring to that millage rate, causing uncertainty in the phrase’s meaning.

Additionally, this section requires a district school board to publish notice of intent to levy additional taxes under s. 1011.71(2), F.S. Since 2008,¹¹ district school boards have also been able to levy additional taxes pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(10), F.S., do not reference those levies.

Proposed Change

The bill amends s. 200.065(5), F.S., by replacing “is adopted” with “was adopted.” The bill also amends the notice requirement in s. 200.065(10), F.S., to require the district school board to publish a notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Notice of Proposed Property Taxes

Current Situation

Section 200.069, F.S., provides the statutory provisions related to The Notice of Proposed Property Taxes, also known as the TRIM notice, which enables taxpayers to compare the prior year assessed value and taxes with the present year assessed value and proposed taxes for the upcoming year. The TRIM notice lists the date, time, and location of all budget hearings at which the taxing authorities will hear from the public. The notice also shows the deadline for filing a petition to protest the assessment. Taxing authorities establish the millage to be levied against a parcel of land shown on the TRIM notice at budget hearings.

Proposed Change

The bill amends s. 200.069, F.S., to require the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county. Any costs related to this form shall be borne by the county. The form may include information regarding the proposed budget for the county, inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission, and include:

- The dollar value of proposed nonvoted property tax funding for each constitutional officer and the county commission;
- The percent of the total nonvoted property tax revenues designated for each constitutional officer and the county commission in the proposed budget; and
- The proposed nonvoted millage rate for each constitutional officer and the county commission, calculated by multiplying the percent of the total nonvoted property tax revenues designated for each entity by the county's proposed nonvoted millage rate.

Fiscally Constrained County Distribution

Current Situation

Sections 218.12 and 218.125, F.S., direct the legislature to appropriate moneys to be distributed to fiscally constrained counties¹² to offset reductions in ad valorem tax revenue experienced as a result of certain amendments to Article VII of the Florida Constitution in 2008.¹³ These provisions contain an

¹⁰ Section 200.065(5), F.S.

¹¹ Ch. 2008-142, L.O.F.

¹² Defined in s. 218.67(1), F.S.

¹³ Am. C.S. for S.J.R. 2-D, 2007; adopted Jan. 2008 (providing, inter alia, a 10% cap on increase of assessed value of nonhomestead residential real property); Ams. Proposed by Taxation and Budget Reform Commission, Revision No. 4, 2008, filed with the

application process for such fiscally constrained counties, including documentation requirements that require counties to report their maximum millage under chapter 200, F.S. This citation is incorrect. Additionally, distributions under these sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than using the current year's millage rate.

Proposed Change

The bill corrects the maximum millage calculation references, and the calculation of the distribution is corrected to be based on the current year millage. The bill also provides that if a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

B. SECTION DIRECTORY:

- Section 1: Amends s. 192.001(2) and (18), F.S., redefining the terms "assessed value of property" and "complete submission on the rolls."
- Section 2: Amends s. 192.0105(2)(d), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.
- Section 3: Repeals s. 192.117, F.S., the Property Tax Administrative Task Force in accordance with s. 20.38, F.S.
- Section 4: Amends s. 193.114(2)(n), F.S., replacing terms that describe what should be included on the real property assessment roll, and removing the requirement that the name and address of the fiduciary responsible for the payment of the taxes on the property be included on the roll.
- Section 5: Amends s. 193.1554, F.S., providing that nonhomestead residential property is to be assessed at just value when it is subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 6: Amends s. 193.1555, F.S., providing that certain residential and nonresidential real property are to be assessed at just value when they are subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 7: Amends s. 193.501(7), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 8: Amends s. 193.503(9), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 9: Amends s. 193.505(9), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 10: Amends s. 194.032(2), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.

- Section 11: Amends s. 194.034(2), F.S., removing the clerk's duty to notify the Department of every VAB decision, and providing that the clerk shall furnish a copy of the decision upon the request of the Department.
- Section 12: Amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the current 95 percent confidence level requirement.
- Section 13: Repeals s. 195.0985, F.S., which requires the Department to annually publish sales ratio studies for counties after approving the tax assessment roll in those counties.
- Section 14: Amends s. 195.099(1) and (2), F.S., removing the Department's mandatory review requirement and, in its place, permits the Department to review assessments of new, rebuilt and expanded businesses that meet certain exemptions.
- Section 15: Amends s. 196.031, F.S., requiring the exemptions applied to homestead property not totally exempt from ad valorem taxation to be applied in a manner that results in the lowest taxable value.
- Section 16: Amends s. 196.081, F.S., allowing certain permanently and totally disabled veterans and surviving spouses of veterans to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 17: Amends s. 196.082, F.S., allowing disabled veterans to apply for a property tax discount prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the discount and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S..
- Section 18: Amends s. 196.091, F.S., allowing disabled veterans confined to wheelchairs to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 19: Amends s. 196.101, F.S., allowing totally and permanently disabled persons to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.
- Section 20: Amends s. 196.121(1), F.S., removing the requirement that the Department provide printed forms; requiring the Department to provide the forms by electronic means or other methods designated by the Department.
- Section 21: Amends s. 199.196(1), F.S., adding a provision related to property of the state and its political subdivisions and municipalities of this state, when used in conjunction with, or as an essential ancillary function of, an exempt or immune Federal, State or County facility, or property.
- Section 22: Amends s. 196.202, F.S., allowing widows, widowers, blind persons, and persons totally and permanently disabled to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.

Section 23: Amends s. 196.24, F.S., allowing a disabled ex-servicemember or surviving spouse to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the 4-year period of limitation in s. 197.182(1)(e), F.S.

Section 24: Amends s. 200.065, F.S., correcting an apparent drafting error and requiring the district school board to publish notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Section 25: Amends s. 200.069, F.S., to require the property appraiser to mail an additional form along with the "TRIM" notice, upon request of the governing body of the county that may include information regarding the proposed budget for the county to inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission.

Section 26: Amends s. 218.12, F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.

Section 27: Amends s. 218.125, F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.

Section 28: Provides the effective date for the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have no impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Except for the provisions relating to certain exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill would reduce a county or municipality's authority to raise revenue in the aggregate; however, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, section 18, of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES