

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 903 Homestead Exemption Fraud
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Local, Federal & Veterans Affairs Subcommittee		Darden	Miller

SUMMARY ANALYSIS

According to Florida Statutes, each property appraiser has the duty to examine each claim for homestead property tax exemption in the county and grant the exemption if found to be in accordance with the law. In addition, property appraisers may, but are not required to, file a tax lien on property if the property appraiser determines the property owner was granted a homestead exemption to which the property owner was not entitled, in order to collect unpaid taxes, interest, and penalties. Further, if a lien is filed, the normal tax certificate/collection process does not apply.

The bill authorizes the Central Florida Homestead Exemption Fraud Detection Pilot Program, allowing the property appraisers for Orange, Osceola, and Seminole Counties to conduct an audit of homestead tax exemptions to determine the percentage of property owners who were not entitled to the homestead exemption. If the audit reveals that more than five percent of property owners were claiming an exemption to which the owner was not entitled, the property appraiser may request the county contract for services to conduct a full examination and audit. The bill specifies the terms of the contract between the county and a contractor conducting an audit, including compensation and contact with the property owner. The bill provides that the pilot program terminates September 30, 2019.

The bill authorizes payment by the respective counties for information relating to violation of tax laws discovered by the Central Florida Homestead Exemption Fraud Detection Pilot Program.

The bill also requires a property appraiser, upon determining a property owner was granted a homestead exemption to which the owner was not entitled, to certify to the county tax collector the additional assessment due for each year and to provide notice to the property owner by mail. The bill provides that if it is determined that a homestead exemption was granted to which the owner was not entitled, a tax lien shall be filed if the taxes, penalties, fees, and interest owed are not paid within thirty days. The bill provides that if a homestead exemption was improperly granted as the result of a clerical mistake or omission by the property appraiser, the property owner shall not be assessed penalties, interest, and fees. The bill requires taxes, penalties, fees, and interest assessed due an improperly granted homestead exemption (except where granted due to a clerical mistake) to be included in the next tax notice and collected in the same manner as current ad valorem taxes. A property owner may appeal the disallowance of a homestead exemption under the pilot program to the county value adjustment board.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a homestead tax exemption.⁶

According to Florida Statutes, each property appraiser has the duty to examine each claim for homestead exemption in the county and grant the exemption if found to be in accordance with the law.⁷

Delinquent Property Taxes

Each year, county property appraisers will certify the tax roll to the corresponding tax collector, and the tax collector will then send tax bills to all properties owing tax within the county.⁸ Property taxes are due once a year, and can be paid beginning November 1st of the assessment year.⁹ Generally, taxes become delinquent if not paid in full as of April 1st of the year after assessment.¹⁰ Delinquent taxes will accrue interest until paid,¹¹ and may accrue penalties in certain circumstances.¹²

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the County holds a tax certificate sale for real property located in the County on which the taxes became delinquent in that year.¹³ A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes; however, it does not convey any property rights or ownership to the certificate holder.

¹ Article VII, s. 1(a), Fla. Const.

² Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Article VII, s. 4, Fla. Const.

⁴ Article VII, ss. 3, 4, and 6, Fla. Const.

⁵ Section 196.031, F.S.

⁶ An additional homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

⁷ Section 196.141, F.S.

⁸ Section 197.322(2), (3), F.S.

⁹ Section 197.333, F.S.

¹⁰ Section 197.333, F.S.

¹¹ Section 197.152, F.S.

¹² See s. 196.161, F.S.

¹³ Section 197.432, F.S.

The property owner has a period of two years from the date the taxes became delinquent to redeem the tax certificate by paying to the County the total due, including accrued interest.¹⁴ After the two year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the County.¹⁵ If tax deed auction proceedings begin, the property owner must pay all taxes for all years that are due and delinquent, plus fees and interest to stop the sale of the property at public auction.¹⁶ If the tax certificate is not redeemed or sold at auction after seven years, the tax certificate is cancelled and considered null and void.¹⁷

Under current law, when any deferred taxes, assessments, or interest are collected, the tax collector maintains a record of the payment and distributes payments received to each taxing authority in the proportionate share of the collected taxes as reflected in the tax bill.¹⁸ The tax collector will make this distribution at least four times during the first two months after the tax roll comes into the tax collector's possession for collection and at least one time in all other months.¹⁹

Fraudulent Homestead Exemption Claims

Current law provides that if a property owner was granted a homestead exemption to which the property owner was not entitled, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.²⁰ The property owner has 30 days to pay the taxes owed, plus penalties and interest.²¹ If not paid within 30 days of notice, the property appraiser may file a tax lien.²² Even if a tax lien is filed, current administration of the law does not follow the tax certificate process described above. Instead, the tax lien remains on the property until it is paid or expires after 20 years.²³

Value Adjustment Board

A property owner who disagrees with the assessment in the Truth in Millage (TRIM) notice or who was denied an exemption or property classification may appeal the property appraiser's decision to the county value adjustment board (VAB).²⁴

A petition to the VAB concerning valuation issues may be filed at any time during the taxable year on or before the 25th day following the mailing of the TRIM notice.²⁵ Petitions concerning the denial of an exemption, a property classification application, or a deferral must be filed at any time during the taxable year on or before the 30th day following the mailing of the TRIM notice.²⁶

VAB hearings must begin between 30 and 60 days after the mailing of the TRIM notice.²⁷ The VAB must remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.²⁸ Current law does not establish a date when the VAB hearings must be concluded.

¹⁴ Section 197.502, F.S.

¹⁵ *Id.*

¹⁶ Section 197.472, F.S.

¹⁷ Section 197.482, F.S.

¹⁸ Section 197.383., F.S.

¹⁹ Section 197.383, F.S.

²⁰ Section 196.161, F.S.

²¹ *Id.*

²² *Id.*

²³ Section 95.091(1)(b), F.S.

²⁴ Section 194.011(3), F.S.

²⁵ Section 194.011(3)(d), F.S.

²⁶ *Id.*

²⁷ Section 194.032(1)(a), F.S.

²⁸ Section 194.032(3), F.S.

After challenges to assessed value of the property have been concluded, the VAB submits the VAB-adjusted assessment roll to the property appraiser²⁹ and to the Department of Revenue.³⁰ The property appraiser's certification of the tax roll occurs after making any adjustments to the assessment rolls caused by the VAB hearings.³¹

Proposed Changes

The bill creates the Central Florida Homestead Exemption Fraud Detection Pilot Program, authorizing the property appraisers for Orange, Osceola, and Seminole Counties to conduct an audit of homestead tax exemptions by October 1, 2017 to determine the percentage of property owners who were not entitled to the homestead exemption.

For the purposes of the audit, the property owner will be considered entitled to the homestead exemption if the owner claims homestead exemption on the property and is either registered to vote at the address of the property or the address of the property is the legal residence provided by the owner to the Department of Highway Safety and Motor Vehicles when applying for a driver license or identification card. The property owner will also be considered entitled to the exemption if the owner lived in the property for the twelve months preceding admission to a long-term care facility.³²

If the audit reveals that more than 5 percent of property owners were claiming an exemption to which the owner is not entitled, the property appraiser may request the county contract for services to conduct a full examination and audit. The county shall contract for services using the same purchasing processes and requirements in general use by the county. The county may not agree to pay the contractor more than 25 percent of the taxes, penalties, and interest found to be due to the county and must appropriate funds for payments through the county budget process.

If the contractor provides the property appraiser with information showing that the property owner was not entitled to a claimed homestead exemption, the property appraiser may disallow the claimed exemption and remove the homestead exemption from the previous tax rolls. The property appraiser may remove up to five years of claimed exemptions from the rolls. The property appraiser may not disallow and remove the homestead exemption if the owner is admitted to a long-term care facility.

The contractor may only contact property owners in a manner prescribed by the property appraiser or by the contract with the county. The contractor must inform the property owner that:

- The contractor is a third party who has been contracted by the county to examine or audit homestead tax exemptions.
- The property owner should contact the property appraiser if the owner has any questions and provide the property appraiser's contact information.

The contractor shall not:

- Simulate a governmental official;
- Communicate with the person between 9 p.m. and 8 a.m. in the person's time zone without the person's prior consent;
- Suggest, communicate, or threaten the person that any money is owed;
- Publish or post, threaten to publish or post, or cause to be published or posted to the public any individual names or list of names of people who have claimed a homestead exemption.

²⁹ Section 193.122(2), F.S.

³⁰ Section 193.122(1), F.S.

³¹ Section 193.122(2), F.S.

³² A nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility. S. 400.0060(6), F.S.

If the property appraiser disallows and removes a property owner's claimed homestead exemption, the property owner may challenge the property appraiser's decision before the value adjustment board. The bill authorizes the value adjustment board to consider claims from previous tax years for the purposes of reviewing disallowed homestead exemption claims under this program.

The Central Florida Homestead Exemption Fraud Detection Pilot Program expires September 30, 2019.

The bill amends s. 196.161, F.S., to clarify that a tax lien based on a fraudulent homestead claim shall be filed for the taxes, penalties, and interest that remain unpaid 30 or more days after the notice of tax lien is sent. Further, the tax lien will remain on the property until the taxes, penalties, and interest are paid in full.³³

The bill provides that the unpaid taxes, interest, and penalties will be added to the next tax assessment if not paid in accordance with s. 196.161, F.S., and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197 (including the sale of tax certificates).

The bill amends s. 213.30, F.S., to allow for the collection of money by contractors pursuant to s. 196.1611, F.S.³⁴

B. SECTION DIRECTORY:

Section 1: Creates s. 196.1611, F.S., creating the Central Florida Homestead Exemption Fraud Detection Pilot Program.

Section 2: Amends s. 196.161, F.S., to clarify the tax lien procedure for fraudulent homestead claims.

Section 3: Amends s. 213.30, F.S. to allow for the compensation of contractors pursuant to s. 196.1611, F.S.

Section 4: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments may collect more in taxes, interest, penalties, and fees through the use of contracted services.

³³ A lien issued pursuant to this section is a first lien, superior to all other liens on the property and will only be removed when discharged by payment or until barred under ch. 95. S. 197.122, F.S.

³⁴ Under current law, s. 213.30 is the sole means by which a person who provide information to the Department of Revenue leading to certain violations of tax laws may be compensated by the department.

2. Expenditures:

Local governments may expend funds to contract for services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in additional business for firms that investigate homestead exemption fraud.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES