

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 766

INTRODUCER: Finance and Tax Committee and Senator Flores

SUBJECT: Ad Valorem Taxation

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 766 makes several changes related to the value adjustment board (VAB) process. The bill:

- Requires the VAB to resolve all petitions by the June 1 following the assessment year. The June 1 date is extended to December 1 in any year that the number of petitions increases by more than 10 percent over the prior year.
- Requires that a petition to the VAB be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation, which is only valid for one tax year.
- Changes the rate of interest for overpayments and underpayments from 12 percent to the prime rate. Requires interest on an overpayment related to a petition to be funded proportionally by each taxing authority that was overpaid.
- Authorizes a petitioner or a property appraiser to reschedule a hearing a single time, for good cause only. Reduces the notice for rehearing from 25 to 15 days when the rehearing is requested by the petitioner.
- Limits the persons who may represent a taxpayer before the VAB to certain professionals, a corporate representative, or an uncompensated individual with a power of attorney.

Prohibits the imposition of interest or penalty when an owner of nonhomestead residential property or nonresidential property was improperly granted an assessment limitation due to a clerical mistake or omission.

The bill also makes permanent the ability of a school district to levy 75 percent of a school district's most recent prior period funding adjustment millage in the event that the final tax roll is delayed for longer than one year.

CS/SB 766 takes effect July 1, 2016.

The Revenue Estimating Conference has not determined the fiscal impact of the bill. Staff estimates that:

- The provisions of the bill that change the interest rates that apply to overpayments and underpayments at the VAB will increase Fiscal Year 2016-2017 property tax revenues by \$5.6 million, with a positive \$5.6 million, recurring impact.
- The provisions of the bill that allow school districts to levy an additional 75 percent PPFAM will increase Fiscal Year 2016-2017 property tax revenues by \$37.7 million; this revenue would have been collected in the following year.
- The provisions of the bill that require VABs to hear all petitions by June 1, will increase Fiscal Year 2018-2019 property tax revenues by \$49.8 million, with no recurring fiscal impact.

II. Present Situation:

Overview of the Ad Valorem Process

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies applicable exclusions, assessment limitation, and exemptions to determine the property’s “taxable value.”³

Each property appraiser submits the county’s tax roll to the Department of Revenue (DOR) for review by July 1 of each year for assessments as of the prior January 1.⁴ In August, the property appraiser sends a Truth in Millage (TRIM) notice to all taxpayers providing specific tax information about their parcel.⁵ Taxpayers who disagree with the property appraiser’s assessment or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;⁶

¹ Both real and tangible personal property are subject to the tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 SO. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ Section 193.1142(1), F.S.

⁵ Section 200.069, F.S.

⁶ Section 194.011(2), F.S.

- Appeal the assessment by filing a petition with the county VAB;⁷ or
- Challenge the assessment in circuit court.⁸

Taxes become payable on November 1. If assessments have not become final by that time – which is sometimes the case for assessments subject to VAB petitions – the Board of County Commissioners may request the tax collector to extend the tax roll prior to the completion of VAB proceedings and instruct the tax collector to begin issuing tax notices based on the property appraiser’s initial tax roll. As part of extending the roll, the board will require the VAB to certify the portion of the roll that it has completed.⁹

Within 20 working days of receiving the certified tax roll, tax collectors send each taxpayer a tax notice.¹⁰ Property taxes are delinquent if not paid before April 1 of the year following the assessment year.¹¹

Overview of the Value Adjustment Board Process

Each county has a VAB, comprised of two members of the governing body of the county, one member of the school board and two citizen members appointed by the governing body of the county.¹² The county clerk acts as the clerk of the VAB.¹³ The property owner may initiate a review by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.¹⁴

The clerk of the VAB is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling hearings.

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.¹⁵ The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.¹⁶ If a special magistrate has been appointed, the recommendations of the special magistrate must be considered by the VAB.¹⁷ The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB. If requested by the DOR, the clerk must provide to the DOR a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037, F.S., in the manner and form requested.

⁷ Section 194.011(3), F.S.

⁸ Section 194.171, F.S.

⁹ See ss. 193.122(1) and 197.323, F.S.

¹⁰ Section 197.322, F.S.

¹¹ Section 197.333, F.S.

¹² Section 194.015, F.S.

¹³ *Id.*

¹⁴ Section 194.011(3)(d), F.S.

¹⁵ Section 194.034(2), F.S.

¹⁶ *Id.*; See also Rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

¹⁷ Section 194.034(2), F.S.

The bill contains provisions addressing several unrelated issues. Additional information regarding the present situation is included in the discussion of the effect of the proposed changes below.

III. Effect of Proposed Changes:

Sections 1 and 10

Present situation: A petitioner before the VAB may be represented by an attorney or agent.¹⁸ A DOR rule provides that the agent need not be a licensed individual or a person with specific qualifications. An agent may be any person, including a family member, authorized by the taxpayer to represent them before the VAB.¹⁹

Proposed change: Sections 192.0105 and 194.034, F.S., are amended to restrict the persons who may represent a petitioner before the VAB to:

- A corporate representative of the taxpayer;
- An attorney who is a member of the Florida Bar;
- A real estate appraiser or a real estate broker licensed under ch. 475, F.S.;
- A certified public accountant licensed under ch. 473, F.S., or
- An individual with power of attorney to act on behalf of the taxpayer who receives no compensation.

Sections 2 and 3

Present situation: VAB hearings must begin between 30 and 60 days after the mailing of the TRIM notice.²⁰ The VAB must remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.²¹ Current law does not require the VAB to conclude its business by a date certain. As of August 4, 2015, three VABs had yet to complete their review of petitions for 2014 assessments.²²

Proposed change: Section 193.122, F.S., is amended to require VABs to hear all petitions and issue their final certification of value by June 1 following the year in which the assessments were made, or by December 1 if the petitions in that county increased by more than 10 percent from the prior year. This change is effective beginning for the 2017 tax roll.

Sections 4 and 5

Present situation: Taxable real property in Florida may be subject to an assessment limitation.²³ These limitations limit the annual increase in a property's assessed value.²⁴

¹⁸ Section 194.034(1)(a), F.S.

¹⁹ Rule 12D-9.018(3), F.A.C.

²⁰ Section 194.032(1)(a), F.S.

²¹ Section 194.032(3), F.S.

²² For spreadsheets containing the VAB petition summaries as reported to the DOR, *See* FLORIDA DEPARTMENT OF REVENUE, PROPERTY TAX DATA PORTAL: VAB SUMMARY available at <http://dor.myflorida.com/dor/property/resources/data.html> (last visited Feb. 11, 2016).

²³ *See* ss. 193.155, 193.1554 and 193.1555, F.S.

²⁴ *Id.*

When a property appraiser finds that an assessment limitation was improperly granted, the property appraiser is required to file a notice of tax lien against any property that the person owns in the county.²⁵ The tax lien must include any unpaid taxes for the prior 10 years, plus a 50 percent penalty and 15 percent interest.²⁶

For homestead property, authority exists for the property appraiser to first notify the property owner before filing a notice of tax lien in the official records of the county and to allow the property owner 30 days in which to pay the taxes, penalty and interest. Furthermore, if the homestead benefit was improperly granted due to a clerical mistake or omission by the property appraiser, the property owner may not be assessed penalty or interest.²⁷ The provisions related to nonhomestead property do not currently contain a 30-day notice provision or provide for penalty and interest waiver in the event of a clerical mistake or omission by the property appraiser.

Proposed change: Sections 193.1554 and 193.1555, F.S., are amended to allow the property appraiser to grant the property owner 30 days in which to pay the tax, penalty and interest due from an improper application of the assessment limitation on nonhomestead residential property and nonresidential property. The bill also provides for penalty and interest waiver in the event of a clerical mistake or omission by the property appraiser.

Section 6

Present situation: There is no statutory requirement that the petitioner sign the VAB petition. A DOR rule provides that a petition filed by an unlicensed agent must be signed by the taxpayer or accompanied by a written authorization from the taxpayer.²⁸

Proposed change: Section 194.011, F.S., is amended to require that a petition to the VAB either be signed by the taxpayer or accompanied by the taxpayer's written authorization for representation by a person authorized to represent petitioners before the VAB. A written authorization is valid for one tax year, and a new written authorization by the taxpayer is required for each subsequent tax year.

Section 7

Present situation: Taxpayers who have petitions pending before the VAB when taxes become due on March 31 are required to pay all of the non-ad valorem assessments and at least 75 percent of the ad valorem taxes.²⁹ Any difference between the amount of ad valorem taxes paid and the amount ultimately due accrues interest at the rate of 12 percent per year.³⁰ Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice.³¹

²⁵ See ss. 193.155(10), 193.1554(10) and 193.1555(10), F.S.

²⁶ *Id.*

²⁷ See s. 196.075, F.S.

²⁸ Rule 12D-9.018(4), F.A.C.

²⁹ See s. 194.014, F.S.

³⁰ *Id.*

³¹ *Id.*

Proposed change: Section 194.014, F.S., is amended to change the rate of interest from 12 percent to the bank prime loan rate as published by the Federal Reserve on July 1 or the first business day thereafter. The bill provides that interest also applies when the property appraiser and the property owner reach a settlement prior to the VAB hearing. The bill provides that interest on overpayments related to a petition is funded proportionately by each taxing authority that was overpaid.

Section 8

Present situation: The school board and the county commission do not have audit authority over the VAB.

Proposed change: Section 194.015, F.S., is amended to allow the school board and the county commission to audit the expenses related to the VAB process.

Section 9

Present situation: A petitioner is required to provide the property appraiser with a list of evidence, copies of documentation, and summaries of testimony at least 15 days prior to the hearing.³² If the petitioner provides this information, and sends the appraiser a written request for responsive information, the appraiser must provide a list of evidence and copies of documentation to be presented at the hearing, including the “property record card.”³³ The property record card is a record of assessment information maintained by the property appraiser for assessed properties in his or her jurisdiction.³⁴ The property appraiser is not required to provide a copy of the property record card if it is available online.³⁵

Proposed change: Section 194.032, F.S., is amended to require a property appraiser to notify the petitioner that the property record card is available online if the property appraiser does not provide a copy when requested by the petitioner.

Present situation: The clerk of the VAB is responsible for scheduling appearances before the VAB. A petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least five calendar days before the day of the originally scheduled hearing.³⁶ The DOR has administered this provision to allow a petitioner to reschedule multiple times for good cause.³⁷ If a hearing is rescheduled, the petitioner receives another 25-day notice.

Proposed change: Petitioners and property appraisers are authorized to reschedule a hearing a single time for good cause. “Good cause” is defined to mean circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent him or her from having adequate representation at the hearing. If the hearing is rescheduled by the petitioner, the notice period for the new hearing is reduced from 25 days to 15 days.

³² Section 194.011(4)(a), F.S.

³³ Section 194.011(4)(b), F.S.

³⁴ Section 194.032(2)(a), F.S.

³⁵ Section 194.032(2)(a), F.S.

³⁶ Section 194.032(2)(a), F.S.

³⁷ See Rule 12D-9.019(4), F.S.

Section 11

Present Situation: In addition to ad valorem taxes, real property may be subject to one or more non-ad valorem assessments imposed by local government. Local governments are authorized to use the annual property tax bill to collect non-ad valorem assessments.³⁸ If the local government uses this method, the local government must adopt its non-ad valorem assessment roll at a public hearing held between January 1 and September 15.³⁹ By September 15, the chair of the local governing board must certify the non-ad valorem tax roll to the tax collector.⁴⁰

Proposed change: Section 197.3632, F.S., is amended to extend the September 15 date for adopting the non-ad valorem assessment roll at a public hearing and for certifying the roll to the tax collector to September 25 for counties as defined in s. 125.011(1), F.S. Section 125.011(1), F.S., includes counties operating under a home rule charter adopted pursuant to ss. 10, 11, and 24 of Article VIII of the Florida Constitution of 1885. Currently, only Miami-Dade County meets this definition.

Section 12

Present situation: Florida school districts are funded by support from federal, state, and local governments.⁴¹ State support for school districts is provided primarily by legislative appropriations. The major portion of state support is distributed through the Florida Education Finance Program (FEFP).⁴² Local revenue for school support is derived almost entirely from local property taxes. Each school district participating in the state allocation of funds for the operation of schools must levy a millage representing its required local effort (RLE) from property taxes.

Each school district's RLE millage rate is determined by a statutory procedure that is initiated by the DOR's certification of the most recent estimated property tax values⁴³ of each district to the Commissioner of Education (Commissioner) no later than two working days prior to July 19 of the assessment year.⁴⁴ The Commissioner uses the estimated property tax values to calculate the RLE millage rate that would generate enough property tax revenue to cover the RLE amount for that year as set forth in the General Appropriations Act.⁴⁵

As discussed above, the VAB begins to hear petitions in September or October of the assessment year, two months after the Commissioner has estimated the millage rate necessary to generate the RLE by the school districts. After the VAB concludes review of petitions, the recertified value of the assessment roll is often lower than the certified values due to changes made by the VAB, and the RLE millage previously calculated will not generate the same revenues, resulting in

³⁸ Section 197.3632, F.S.

³⁹ Section 197.3632(4)(a), F.S.

⁴⁰ Section 197.3632(5)(a), F.S.

⁴¹ 2015-16 Funding for Florida School Districts, Statistical Report, Florida Department of Education, *available at* www.fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf (last visited Feb. 11, 2016).

⁴² *Id.* at page 2.

⁴³ The value of property may change depending on the outcome of informal appeals to the property appraiser, VAB determinations, or circuit court decisions.

⁴⁴ Section 1011.62(4)(a)1.a., F.S.

⁴⁵ *Id.*

uncollected funds. In the following year, the Commissioner is authorized to calculate an additional millage rate necessary to generate the amount of the uncollected funds.⁴⁶ The additional millage rate is referred to as the prior period funding adjustment millage (PPFAM). A PPFAM is levied in the year after the school district experienced a shortfall in RLE funds; the process results in a one-year delay in the school district's receipt of revenue.

In rare instances, a VAB may be unable to complete all petitions for one assessment year before the millage rates are being set for the next assessment year. In this situation, the Commissioner would be unable to calculate a PPFAM for the affected school district because the roll for the prior year has not been completed. This situation would delay the school district's recoupment of lost revenues due to changes by the VAB for two years.

In 2015, the Legislature passed a temporary solution for school districts where the VAB process delays completion of the certification of the final tax roll for longer than one year.⁴⁷ For the 2015-16 Fiscal Year only, the school district may "speed-up" the levy of 2014 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined.⁴⁸

Proposed change: Section 1011.62(4)(e), F.S., is amended to allow affected school districts to "speed-up" the levy of unrealized RLE funds in any year in which the tax roll is not yet final by levying a PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined.

Section 13 provides an effective date of July 1, 2016, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provisions in Article VII, section 18 of the Florida Constitution, limit the Legislature's authority to require counties and municipalities to expend funds, to limit the authority of counties or municipalities to raise revenues, and to reduce the percentage of state tax shared with counties and municipalities. Generally, these restrictions can be overcome with a two-thirds vote in both houses of the Legislature.

The provisions of the bill may require some counties to expend additional funds in order to complete the VAB process earlier. Other provisions of the bill significantly shift certain revenues between Fiscal Years 2016-2017, 2017-2018, and 2018-2019. However, the recurring revenue impact is estimated to be positive in the long-term.

B. Public Records/Open Meetings Issues:

None.

⁴⁶ Section 1011.62(4)(e), F.S.

⁴⁷ Chapter 2015-222, Laws of Fla.

⁴⁸ Section 1011.62(4)(e)1.c., F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of CS/SB 766. Staff estimates that:

- The provisions of the bill that change the interest rates that apply to overpayments and underpayments at the VAB will increase Fiscal Year 2016-2017 property tax revenues by \$5.6 million, with a positive \$5.6 million, recurring impact.
- The provisions of the bill that allow school districts to levy an additional 75 percent PPFAM will increase Fiscal Year 2016-2017 property tax revenues by \$37.7 million; this revenue would have been collected in the following year.
- The provisions of the bill that require VABs to hear all petitions by June 1, will increase Fiscal Year 2018-2019 property tax revenues by \$49.8 million, with no recurring fiscal impact.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The provisions of CS/SB 766 that require VABs to hear all petitions and certify the tax roll to the property appraiser prior to June 1 may require local governments to expend additional funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 192.0105, 193.122, 193.1554, 193.1555, 194.011, 194.014, 194.015, 194.032, 194.034, and 1011.62.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on February 16, 2016:

The CS removes a new procedure created by the bill requiring the Department of Revenue to review the processes of the property appraiser and VAB after the tax roll has been reduced by more than two percent for three consecutive years. The CS prohibits the assessment of penalty and interest when an assessment limitation is improperly granted due to a clerical mistake or omission by the property appraiser. The CS extends the time by 10 days for certain counties to hold public hearings and certify the non-ad valorem assessment roll. The CS makes permanent the authority for a school district to levy a prior period funding adjustment millage equal to 75 percent of the most recent prior period funding adjustment millage when the tax roll is not yet complete.

B. Amendments:

None.