

STORAGE NAME: h3695s1.rpp

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3695

RELATING TO: Ad valorem tax assessments

SPONSOR(S): Committee on Real Property & Probate and Representative Stabins

COMPANION BILL(S): SB 1400

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE 5 YEAS 2 NAYS
- (2) COMMUNITY AFFAIRS
- (3) FINANCE & TAX
- (4)
- (5)

I. SUMMARY:

CS/HB 3695 provides for the possibility of liability for unpaid taxes, penalty, and interest if an owner of property classified as agricultural for ad valorem tax purposes fails to notify the property appraiser when the property becomes ineligible for the classification. If the property appraiser determines that the property inadvertently received the classification, the owner may be liable for the unpaid taxes only.

This bill should not have a negative fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida Constitution

Article VII, section 4 of the Florida Constitution, provides that by general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation. This section further provides that agricultural land, land producing high water recharge to Florida's aquifers or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of its character or use.

Florida Statutes

Section 193.461, Florida Statutes, requires the property appraiser, on an annual basis, to classify for assessment purposes all lands within the county as either agricultural or nonagricultural. In order for land to be classified as agricultural, a return must be filed on or before March 1 of each year. The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser with information reasonably required to establish that the lands were actually used for a bona fide agricultural purpose. A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for classification of property within the county after an initial application is made and the classification is granted.

Agricultural Purposes

The term "agricultural purposes" includes, but is not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.

Bona Fide Agricultural Purposes

The phrase "bona fide agricultural purposes" is defined to mean a good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

1. The length of time the land has been so utilized;
2. Whether the use has been continuous;
3. The purchase price paid;
4. Size, as it relates to specific agricultural use;
5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices;
6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and
7. Such other factors as may from time to time become applicable.

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Section 193.461(3)(b), Florida Statutes.

Reclassification as Non-Agricultural

According to s. 193.461(4), F.S., the property appraiser shall reclassify the following lands as nonagricultural:

1. Land diverted from an agricultural to a nonagricultural use.
2. Land no longer being utilized for agricultural purposes.
3. Land that has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this provision.

The board of county commissioners may reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of the lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.

In addition, the sale of land for a purchase price which is 3 or more times the agricultural assessment placed on the land creates a rebuttable presumption that the land is not used primarily for bona fide agricultural purposes.

Compare: Homestead Exemption

Section 196.131(2), Florida Statutes, provides that any person who knowingly and willfully gives false information for the purpose of claiming homestead exemption is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or by fine not exceeding \$5000 or both. Section 775.082(4)(a), Florida Statutes, provides for imprisonment not exceeding 1 year.

In addition, section 193.155(9), Florida Statutes, provides that if the property appraiser determines that for any year or years within the prior 10 years a person who was not entitled to the homestead property assessment limitation granted under this section was granted the homestead property assessment limitation, the property appraiser shall record a notice of tax lien against any property owned by that person in the county, and the property must be identified in the notice of tax lien. The property that is in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if the person inadvertently receives the exemption following a change of ownership, the person need not pay the unpaid taxes, penalties, or interest.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3695 provides that when an owner of property having an agricultural classification fails to notify the property appraiser when the use of the land changes so that it is no longer entitled to the agricultural classification, the owner may be liable for the unpaid taxes, a penalty of 25 percent of the unpaid taxes, and interest at 15 percent per annum for each year the property was granted an agricultural classification to which it was not entitled.

If the property appraiser determines that the property inadvertently received the classification, the owner may be liable for the unpaid taxes only.

This act will take effect January 1 of the year following the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill permits property appraisers to determine whether a property "inadvertently" received an agricultural classification resulting in a property owner not being liable for the penalty and the interest.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

See (1) above.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

The bill provides for a penalty and interest when a person wrongfully receives an agriculture classification.

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

The bill provides for a penalty and interest when a person wrongfully receives an agriculture classification.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 193.461, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

See Effect of Proposed Changes section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

This bill will give local property appraisers the discretion to levy penalties and interest against persons whose property is classified as agricultural, but who do not meet the criteria for this classification and do not notify the property appraiser of this fact.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons whose property is classified as agricultural and who fail to advise the property appraiser when their property no longer qualifies for this classification, may be liable for the taxes, a penalty of 50 percent of the taxes due, and interest at 15 percent per annum.

2. Direct Private Sector Benefits:

The reduction in the number of individuals or entities who wrongfully continue to receive an agricultural classification should result in a positive fiscal impact at the local level. This may benefit individuals or entities who are paying their fair share of ad valorem taxes by alleviating the need to increase taxes.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Delegation of Legislative Authority

This bill provides that if the property appraiser determines that a person has inadvertently received an agricultural classification, that person is liable for the unpaid taxes only. Section 193.155(9), Florida Statutes, relating to the homestead exemption, provides that if a person inadvertently receives the exemption following a change of ownership, the person need not pay the unpaid taxes, penalties, or interest. This bill provides no direction to property appraisers for determining what is "inadvertent." The bill appears to leave the decision as to what is inadvertent to the discretion of the property appraiser. In addition, the bill provides that if the continuation of the classification is "inadvertent," the property owner "may" be liable for the unpaid taxes only. There is no guidance in the statutes as to how the property appraiser decides whether or not to require payment of the unpaid taxes.

In addition, the CS/HB 3695 makes the imposition of the penalty discretionary on the part of the property appraiser. This, as well as the lack of specificity as to what "inadvertent" means may make the bill susceptible to challenge as an unlawful delegation of legislative authority. Case law interpreting whether authority has been unlawfully delegated addresses the specificity in carrying out the legislative intent. "The crucial test in determining whether a statute amounts to an unlawful delegation of legislative power is whether the statute contains sufficient standards or guidelines to enable the agency and the courts to determine whether the agency is carrying out the legislative intent." Department of Ins. v. Southeast Volusia Hosp. Dist., 438 So. 2d 815, 819 (Fla. 1983), appeal dismissed, 466 U.S. 901, 104 S. Ct. 1673, 80 L. Ed. 2d 149 (1984). "The specificity of standards and guidelines required from the legislature depends on the subject matter dealt with and the degree of difficulty involved in articulating finite standards." Apalachee Regional Planning Council v. Brown, 546 So.2d 451, 453 (Fla. 1st DCA 1989), approved by, 560 So. 2d 782 (Fla. 1990). "If the subject matter requires the expertise and flexibility of the agency to deal with complex and fluid conditions, the legislature will not be required to draft more detailed or specific legislation." Id. Thus, "statutes are not unlawful delegations of legislative power when the power sought to be exercised under their auspices is simply a technical issue of implementation and not a fundamental policy decision." Id.

Arrearage

The bill provides that the penalty may be assessed for each year for which the property was granted an agricultural classification to which it was not entitled. The homestead exemption penalty provides that the penalty can only be assessed for the prior 10 years. The bill also does not address a change of ownership and the liability of subsequent owners for back taxes due from an improper agricultural classification obtained by a prior owner.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

The Committee on Real Property & Probate adopted a strike-everything amendment which is incorporated into the committee substitute. The amendment changed the penalty provision to make it permissive. The bill now provides that if the owner of property which is classified as agricultural fails to notify the property appraiser when the use of the land changes so that it is no longer entitled to the agricultural classification, the owner may be liable for the unpaid taxes, plus a penalty of 25 percent of the unpaid taxes and 15 percent interest per annum for each year for which the property was granted an agricultural classification to which it was not entitled.

The bill further provides that if the property appraiser determines that the property inadvertently received the agricultural classification, the owner may be liable for the unpaid taxes only. The bill appears to leave the decision as to the meaning of the term inadvertent, and the decision as to whether or not to require payment of the unpaid taxes, to the discretion of the property appraiser.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

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