

STORAGE NAME: h0445.ca

DATE: February 28, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 445

RELATING TO: Ad Valorem Tax Administration (Presumption of Correctness)

SPONSOR(S): Representative Starks and others

STATUTE(S) AFFECTED: Section 194.171, Florida Statutes

COMPANION BILL(S): SB 134 (s)

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

- (1) COMMUNITY AFFAIRS
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill requires that a property appraiser's assessment or determination is presumed correct in cases where a citizen challenges a determination made by a property appraiser when establishing the ad valorem tax.

The bill also establishes that a taxpayer shall have the burden to overcome the presumption of correctness by a preponderance of the evidence, but shall not have the burden of presenting proof which excludes every reasonable hypothesis of a legal assessment.

The bill states that these standards apply in both administrative and judicial proceedings.

It is estimated that the tax impact for counties is a loss of between \$27.9 and \$64.5 million, for municipalities a loss of between \$8.2 and \$18.9 million, and for school districts a loss of between \$33.4 and \$77.0 million in the first year.

The bill reduces the authority municipalities and counties have to raise revenue by an amount which is estimated to be significant. Therefore, the bill requires a two-thirds vote of each house to pass.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In Florida, property appraisers are constitutional officers under Article VIII, Section 1(d) of the Florida Constitution.¹ In addition to being constitutional officers, the property appraisers perform the "constitutional function" of just valuation for ad valorem taxation as prescribed by Article VII, section 4 of the Florida Constitution. Currently, under Florida law, the property appraisers' status as constitutional officers when performing their constitutional function of just valuation gives rise to a judicially created presumption of correctness. See e.g. Powell v. Kelly, 223 So.2d 305 (Fla. 1969); Straughn v. Tuck, 354 So.2d 368 (Fla. 1978); and District School Board of Lee County v. Askew, 278 So.2d 272 (Fla. 1973). That presumption can only be overturned if the taxpayer is able to prove that the appraisal made was not supported by any reasonable hypothesis of legality. See e.g., Folsom v. Bank of Greenwood, 120 So. 317 (Fla. 1929) and Blake v. Xerox Corporation, 447 So.2d 1348 (Fla. 1984). The tax assessor is granted this presumption so long as he has considered the eight factors set forth in section 193.011, Florida Statutes. See Graham v. City of West Tampa, 71 So. 926 (Fla. 1916); see also e.g., Vero Beach Shores v. Nolte, 467 So.2d 1041 (Fla. 4th DCA 1985). These eight factors are:

- (1) The present cash value of the property;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property.

According to the Second District Court of Appeal, the very difficult burden of proof is necessary because when reaching an opinion as to real estate value, numerous and sometimes conflicting techniques can be used. All of the techniques have general

¹ Proponents of the bill argue that all property appraisers are not constitutional officers because Article VIII, section 1(d) of the Florida Constitution provides that if a county is a charter county, then it can, by an approved vote of the electors of the county, either choose a format other than general election for the appointment of a property appraiser or can do away with the office all together. In support of this proposition, the proponents cite one county in which the property appraiser is an employee of the county commission. The courts, including the Florida Supreme Court, has failed to make this distinction.

recognition and may or may not be more or less appropriate given a certain set of facts. See Daniel v. Canterbury Towers, Inc., 462 So.2d 497 (Fla. 2d DCA 1985).

The Florida courts have interpreted the presumption of correctness and the every reasonable hypothesis standard to mean that if a property appraiser acts lawfully (he has considered the eight factors relating to just valuation set forth in section 193.011 of the Florida Statutes) and the appraisal made is within the range of reasonableness, then the appraisers determination will not be overturned. See Blake v. Xerox, supra. Thus, an appraiser may reach a right result for the wrong reason and his determination will still be upheld, as it is the amount of the assessment not the methodology used at arriving at the assessment which is the critical question in a tax assessment challenge. See City National Bank v. Blake, 257 So.2d 264 (Fla. 3d DCA 1972) and Homer v. Connecticut General Life Insurance Co., 213 So. 2d 490 (Fla. 3d DCA 1968).

In sum, once the property appraiser has produced sufficient proof that he has considered the eight factors set forth in section 193.011, Florida Statutes, and that he has otherwise complied with the law, his appraisal is cloaked with the presumption of correctness. The burden is then on the taxpayer to prove there is no reasonable hypothesis which can support the property appraiser's assessment. Some taxpayers have found this burden to be quite difficult to overcome.

B. EFFECT OF PROPOSED CHANGES:

This bill requires that a property appraiser's assessment or determination is presumed correct in cases where a citizen challenges a determination made by a property appraiser when establishing the ad valorem tax.

The bill also establishes that a taxpayer shall have the burden to overcome the presumption of correctness by a preponderance of the evidence,² but shall not have the burden of presenting proof which excludes every reasonable hypothesis of a legal assessment.

The bill states that these standards apply in both administrative and judicial proceedings.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

² According to *Black's Law Dictionary, Sixth Edition, 1990*, "preponderance of evidence" as a standard of proof is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

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

No.

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

To the extent that the change will make it easier for a taxpayer to prevail against a property appraiser, it can be assumed that more taxpayers will contest their tax assessments. That increase means an increase in workload and a potential increase in litigation before Value Adjustment Boards and the courts.

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

No.

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

Not Applicable (N/A)

- (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:

N/A

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

N/A

- 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?

N/A

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

N/A

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

N/A

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:

N/A

- (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:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Adds a new subsection to section 194.171, Florida Statutes, to grant a presumption of correctness to a property appraiser's determination in ad valorem assessments, so long as the appraiser complies with the law and follows recognized professional standards of appraisal practice. This section also provides that a taxpayer can overcome that presumption of correctness by a preponderance of the evidence and will not be forced to present proof which excludes every reasonable hypothesis of a legal assessment.

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The presumption and the burden of proof would apply in both administrative and judicial proceedings.

Section 2: Provides that the act shall be effective upon becoming law and will apply actions which are pending as of the effective date in which final judgment has not been entered.

III. FISCAL ANALYSIS & 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Negative indeterminate. See FISCAL COMMENTS below.

2. Recurring Effects:

Negative indeterminate. See FISCAL COMMENTS below.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

This bill may make it easier for a taxpayer to prevail against the property appraiser in obtaining a reduction in property tax liability.

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

None.

D. FISCAL COMMENTS:

The change in the burden of proof is likely to have a negative fiscal impact on local governments and a positive impact on the private sector. To the extent that the change will make it easier for a taxpayer to prevail against a property appraiser, it can be assumed that more taxpayers will contest their tax assessments. That increase means an increase in workload, a potential increase in litigation before Value Adjustment Boards and the courts, and a loss in value from the ad valorem tax rolls either through litigation, settlement, or reduced assessments to avoid litigation. While the extent of the loss is indeterminate at this time, results of the 1996 Revenue Estimating Conference (REC) suggested negative impacts to local governments ranging from \$69.5 million to \$160.3 million in tax the first year and annualized figures of up to three times the amounts. The REC has discussed the issue numerous times and has provided opportunities for interested parties to provide information regarding the issue. The REC has generally agreed that the bill will have a large negative fiscal impact on local governments. The 1997 REC has not come to a consensus on this bill.

Using the above ranges the tax impact for counties is estimated to be a loss of between \$27.9 and \$64.5 million, for municipalities a loss of between \$8.2 and \$18.9 million, and for school districts a loss of between \$33.4 and \$77.0 million in the first year.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require local governments to expend funds due to increased workload and litigation. However, during the 1996 Regular Legislative Session, the Speaker of the House did not find this bill to be a type "A" mandate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill reduces the authority municipalities and counties have to raise revenue by an amount which is estimated to be significant. The reduction in authority is due to both taxpayer success in obtaining judicial reductions in property valuations and property appraisers becoming more conservative in valuing property. Therefore, the bill requires a two-thirds vote of each house to pass.

During the 1996 Regular Legislative Session, the Speaker of the House found this bill to be a type "B" mandate.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Starks will offer one amendment that strikes everything after the enacting clause and essentially rewrites the bill. The amendment makes five basic changes to the bill as originally filed. The amendment:

- clarifies that the bill relates to valuations made by the property appraiser and not exemptions or categorization;
- states that the presumption of correctness given the property appraiser shall be lost if a taxpayer shows by a preponderance of the evidence that either the property appraiser has failed to consider the criteria in section 193.011, F.S., or the assessment is arbitrarily based on appraisal practices which are different from those generally applied by the property appraiser to comparable property;
- provides that if the presumption of correctness is lost, the taxpayer shall have the burden of proving by a preponderance of the evidence that the assessment is in excess of just value. If the presumption is retained, the taxpayer shall have the burden of proving by clear and convincing evidence³ that the assessment is in excess of just value;
- provides that if the assessment is determined to be erroneous, the Value Adjustment Board or the Court can establish the assessment if there exists competent substantial evidence in the record (if the record lacks such evidence, the matter shall be remanded to the property appraiser with directions from the Value Adjustment Board or the Court); and
- changes the effective date to upon becoming a law with the bill applying to assessments included in the January 1, 1997, tax roll.

³ According to *Black's Law Dictionary, Sixth Edition, 1990*, "clear and convincing proof" is that which results in reasonable certainty of the truth of the ultimate fact in controversy. It requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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