

STORAGE NAME: h0231s1a.ft

DATE: April 12, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS/HB 231

RELATING TO: Ad Valorem/Property Damaged by Natural Disasters

SPONSOR(S): Committee on Community Affairs and Representatives Johnson, Wiles, and Ball

COMPANION BILL(S): SB 828 (s), HB 89 (c)

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

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (2) FINANCE AND TAXATION YEAS 13 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill allows a partial abatement or refund of ad valorem property taxes for "residential homes" property damaged by "natural disasters". The bill also establishes a procedure for obtaining such partial abatements or refunds.

In addition, the bill grants Boards of County Commissions authority to amend their budgets to address decreased tax revenues, if any, resulting from such abatements or refunds. The fiscal impact of this bill is indeterminate as "natural disasters" are difficult to predict and the bill has several vague and poorly defined terms. However, the bill does provide a cap on the amount which can be abated or refunded. This cap is 5% of county and municipal ad valorem revenue and 2% of school board ad valorem revenue. This maximum possible impact is more than large enough to qualify this bill as a mandate requiring a two-thirds majority to pass.

See Amendments section.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

All real and tangible personal property which is substantially complete is assessed for ad valorem purposes on January 1 of each year. Property owners are billed for taxes in November of that year, and have until April of the following year to pay. If structures on the property are damaged by a natural or manmade disaster, the assessed value of the property remains as it was established on January 1 of that year. The property is reassessed the following January 1, with changes to the property as an essential consideration in the reassessment. There is currently no mechanism for property tax abatement or refund on property damaged by natural or manmade disasters.

Chapter 88-101, Laws of Florida, provides for property tax abatement for residential buildings and structures damaged by tornadoes or windstorms during tax years 1988 and 1989. Chapter 85-322, Laws of Florida, also provides for property tax abatement of residential buildings and structures damaged by fire during tax years 1985 and 1986.

Moreover, the 1998 Legislature passed 98-185, Laws of Florida, which allowed a partial abatement of ad valorem property taxes for residential property damaged by the 1998 tornadoes in South and Central Florida. However, in at least one case, a county had to issue partial refunds in addition to abatements to implement the requirements of 98-185, L.O.F. According to Osceola County property appraisers, such action was necessary since some tax assessments were already issued by the time the law became effective. Osceola County reported refunding approximately \$150,000 in tax revenues pursuant to 98-185, Laws of Florida. That figure may increase slightly since the county will continue to receive abatement applications until March 1, 1999. However, the figure does not include the cost of staff time in administering the provisions of the law which is reportedly minimal.

Historically, requests to the Legislature for ad valorem property tax relief due to a natural disaster have been on a year-to-year basis. Existing law provides no generalized provisions granting such tax relief on a perpetual basis.

In 1998, wildfires threatened safety, caused human hardship, and extensive damage to property in the state. According to "An Assessment of Florida's Wildfires of 1998", almost 500,000 acres burned and well over 300 homes were damaged or destroyed. As a result, many residences are uninhabitable.

Chapter 129, Florida Statutes, establishes a budget system for the control of the finances of the Boards of County Commissions (boards). The chapter provides boards authority to amend their county budgets and transfer funds under certain circumstances. However, such boards are unable to transfer funds or amend the budget for the purpose of adjusting for decreases in their revenue due to abatements or refunds for property damage by natural disasters.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a permanent, statutory process for obtaining a partial abatement or refund of ad valorem property taxes for residential houses damaged or destroyed by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters. The bill provides that a natural disaster is not limited to the aforementioned natural disasters and includes **any** event which causes a "residential house" to be uninhabitable for 60 days or more. The definition of "natural disaster" is broad enough to include arson, termite damage, or remodeling.

To qualify for such tax abatement or refund, the residential house must be incapable of being used and occupied. Property owners must file an application with the property appraiser before July 1 of the year following the tax year in which the destruction or damage occurred. Failure to make such timely application constitutes a waiver of any claim for a partial abatement or refund under this bill.

In turn, the property appraiser must determine whether the property is eligible for a partial abatement or refund, and submit an official written statement to the tax collector with the following information:

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- The number of months the residential house was not capable of use and occupancy;
- The value of the residential house before the damage or destruction;
- The total taxes due on the residential house, based on the ratio that the number of months of loss of use and occupancy bears to 12; and
- The amount of abatement or refund in taxes.

The tax collector must abate or refund the taxes on the property shown on the tax collection roll in the abatement or refund amount specified by the property appraiser. By September 1, the tax collector must notify the Board of County Commissioners, school boards, governing bodies of municipalities, and the Department of Revenue of the total reduction in taxes resulting from the partial abatement or refund of taxes granted in the county.

The bill provides a definition for "residential house" aimed at excluding commercial buildings and commercial residential property from qualifying for the ad valorem tax abatement or refund. The definition of "residential house" specifically includes mobile homes and condominium units. In addition, the definition of "residential house" specifies that it can be a "permanent or temporary residence" for the owner. This definition is substantially different and broader than the definition of homestead used for the homestead exemption and would include vacation homes as well as numerous other structures. Further, the bill defines the "loss of use and occupancy" to mean that the residential house, or some self-sufficient unit within it, cannot be used for the purpose for which it was constructed during a period of 60 days or more.

The bill becomes effective upon becoming a law, except that the provisions of this bill pertaining to the application for abatements or refunds are retroactive to January 1, 1998. In addition, because the bill does not automatically expire, it allows the natural disaster tax abatement or refund program to be applied in all future years.

Since the bill eliminates counties from having to make an ad valorem property tax relief request to the Legislature every year they face a natural disaster, concern over the potentially high fiscal impact to some counties has grown. During an exceptionally bad year for natural disasters, some counties may face Hurricane Andrew-type destruction. The cost of abatements or refunds under this bill may adversely impact the budgets of such counties. Moreover, because no legislative action is needed to authorize the refund or abatement, a special effort will need to be made if the local government wishes to receive state funds to offset the loss in ad valorem revenues.

The committee substitute attempts to remedy this fiscal concern by placing an annual limitation on the total amount of ad valorem property tax revenues that can be used for abatements and refunds. If the limitation is exceeded, then the provisions of this bill may not be implemented. However, the drafting of these provisions is not clear. If the refund or abatement exceeds 2% of a school districts ad valorem levy on real property, then the refund or abatement will not apply to the taxes levied by that school board. However, the provision covering counties and municipalities are less clear. If the amount of the levy exceeds 5% of the county or municipality's ad valorem levy on real property, the provisions of this bill will not apply. It is unclear if this effect is limited to the levy of the taxing authority which hits the cap, or if it is intended to keep both entities from implementing this section if the amount of the refund or abatement exceeded the cap for one taxing authority. Finally, no provision is made regarding the assessments of special districts. This could result in a special district being required to refund or abate all of its ad valorem revenue. This could have unintended results, if, for example, the devastation of a forest fire resulted in a fire control district losing all of its operating revenue.

In addition, the bill offers budgetary flexibility to the Boards of County Commissioners to amend their budgets or transfer funds to specifically compensate for decreased tax revenues resulting from implementing the provisions of this bill.

APPLICATION OF PRINCIPLES:

1. Less Government:

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

any authority to make rules or adjudicate disputes? No.

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

Yes. The bill requires county property appraisers to process applications for a partial tax abatement or refund from residential owners whose property has been destroyed or damaged by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters. The property appraiser will also be required to determine what constitutes a natural disaster. The bill further requires county tax collectors to adjust the tax collection roll for each application approved.

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

No.

- 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?

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

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

No. However, local taxing authorities may have to raise taxes in subsequent years in order to make up for any unexpected budget shortfalls that result from this bill if a disaster occurs.

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

No.

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

By providing for a partial abatement or refund of taxes on certain destroyed properties, the bill has the effect of reducing ad valorem property tax revenues. The bill does not provide a specific source for funding the tax abatements or refunds.

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

Not applicable.

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

No.

3. Personal Responsibility:

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

Not applicable.

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

No.

4. Individual Freedom:

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

Yes. Owners of residential houses made uninhabitable for 60 days or more by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters may be eligible to receive a partial property tax abatement or refund on their property.

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

No.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

- 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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

C. STATUTE(S) AFFECTED:

Section 129.06, Florida Statutes and s. 196.296, as created.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 129.06, Florida Statutes; expands the time period to 90 days following the end of the fiscal year for which Boards of County Commissions can amend a budget; and provides Boards of County Commissions with authority to amend county budgets or transfer funds in response to possible decreased ad valorem tax revenue due to s. 196.296.

Section 2: Creates s. 196.296; provides for partial abatements or refunds of ad valorem property taxes for residential houses destroyed or damaged and made uninhabitable for 60 days or more by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters; provides a deadline for applying for a partial abatement or refund; provides eligibility requirements and administrative procedures for issuing a partial abatement or refund of ad valorem property taxes; and places a limitation on the amount of abatements and refunds that can affect counties' and school boards' total ad valorem property tax revenues before the provisions of s. 196.296 can be implemented.

Section 2: Provides that this bill takes effect upon becoming law and s. 196.296, as created, shall apply retroactively to January 1, 1998.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None, unless there is a General Revenue appropriation to recompense the lost tax revenues due to the tax abatement or refund.

2. Recurring Effects:

None, unless there is a General Revenue appropriation to recompense the lost tax revenues due to the tax abatement or refund.

3. Long Run Effects Other Than Normal Growth:

None, unless there is a General Revenue appropriation to recompense the lost tax revenues due to the tax abatement or refund.

4. Total Revenues and Expenditures:

None, unless there is a General Revenue appropriation to recompense the lost tax revenues due to the tax abatement or refund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

This bill grants a temporary abatement or refund of property taxes on residential property destroyed by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters. Thus, there will be a reduction in local government revenues. A county may amend its budget to offset this loss. Sales tax revenue may increase as a result of increases in building materials being purchased to repair or replace damaged residences.

2. Recurring Effects:

None.

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:

Property owners may seek temporary ad valorem tax relief in the wake of crippling destruction and damage to their residential houses caused by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters.

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

The bill may stimulate the construction industry economy by assisting property owners in financing repairs.

D. FISCAL COMMENTS:

The bill implies that the specific source of the abated or refunded taxes are those taxing authorities which levy ad valorem taxes. These taxing authorities (including counties, cities, school boards, and special districts) may either have to cut their budgets or may increase property taxes in the following fiscal year to cover their financial losses under this bill. In light of the additional budgetary authority granted to Boards of County Commissions, counties are authorized to amend or transfer funds to compensate for decreased receipts of ad valorem tax revenues.

The applicability of the abatement or refund is void in any year in which the total amount of abatement or refund exceeds 5 percent of the total revenue from ad valorem taxes on real property levied by a county or municipality, or 2 percent by a school district.

The Revenue Estimating Conference (REC) found that the bill was too vague, concluding it was impossible to determine what types of property would qualify and what types of "natural disasters" would be included. In addition, the REC noted problems with predicting the extent of natural disasters in any year. As a result, the official estimate is indeterminate.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

Under the bill, counties are responsible for the cost of processing applications for an ad valorem property tax abatement or refund relating to residential houses damaged by tornado, flood, windstorm, wildfire, sinkhole, or other natural disasters. However, the cost of such processing is likely to be insignificant or less than \$1.4 million. As such, this bill is exempt from the provisions of Article VII, section 18, of the Florida Constitution.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

Article VII, section 18, subsection (b), of the Florida Constitution, requires two-thirds vote of the membership of each house in order to enact a general law reducing the authority that counties and cities had on February 1, 1989, to raise revenues in the aggregate. By providing for a partial abatement or refund of taxes on certain destroyed properties, the bill also has the effect of reducing ad valorem property taxes. Since the annual local revenue loss is likely to be significantly more than \$1.4 million, the bill is subject to the requirements of the mandate provision.

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

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

V. **COMMENTS:**

In addition to the problems mentioned earlier, the inclusion of the abatement mechanism in this bill is problematic. Since the taxpayer must suffer the destruction and rebuild before the amount of the abatement can be properly figured it is unlikely that the abatement mechanism will be available in most cases. Moreover, if abatement is used then there is some question that the constitutional requirement for taxation at an equal rate will be violated.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On February 17, 1999, the House Committee on Community Affairs adopted a strike-everything-after-the-enacting-clause amendment to HB 231 and one amendment to the amendment. The committee adopted a committee substitute to the bill.

Primarily, the "strike everything" amendment differs from the bill as introduced in the following ways:

- Restricts ad valorem property tax relief due to certain natural disasters to residential housing, to include mobile homes and condominium units; and

-Provides definitions for natural disasters and residential houses.

The amendment to the amendment requires tax collectors to notify the boards of county commissioners, school boards, and the governing bodies of municipalities of the total abatement or refund of taxes for all property that received a partial abatement or refund pursuant to this bill.

On April 9, 1999, the House Committee on Finance and Taxation adopted a strike-everything-after-the-enacting-clause amendment to CS/HB 231. This amendment limited the effect of the bill to the 1998 tax year and to damage related to forest fires and tornadoes. Under the amendment a house or other residential structure is eligible for a refund if the building was incapable of being used or occupied due to damage related to a forest fire or tornado. Property owners must file an application with the property appraiser before August 15, of the year following the year in which the destruction or damage occurred. The property appraiser must determine whether the property is eligible for a partial abatement, and submit an official written statement to the tax collector with the following information:

- The number of months the building was not capable of use and occupancy;
- The value of the building or structure before the damage or destruction;
- The total taxes due on building or structure, based on the ratio that the number of months of loss of use and occupancy bears to 12; and

- The amount of reduction in taxes.

The tax collector is then responsible for reducing the taxes on the property on the tax roll to the amount specified by the property appraiser. By September 1, the tax collector must notify the Board of County Commissioners and the Department of Revenue of the total reduction in taxes resulting from the partial abatement of taxes granted in the county.

“Loss of use and occupancy” is defined to mean that the building or structure, or some self-sufficient unit within it, cannot be used for the purpose for which it was constructed during a period of 60 days or more. The bill specifies that “house or other residential building or structure” does not include amenities not essential to use and occupancy, such as detached utility buildings, bulkheads, fences, detached carports, swimming pools, or other similar items or property.

The preliminary estimate of the fiscal impact of the strike-everything amendment to CS/HB 231 is negative \$3.4 million in local cash impact with no recurring impact. While this impact is considerably smaller than the impact of the original bill, as amended the bill still qualifies as a mandate.

VII. SIGNATURES:

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