

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1283 Ad Valorem Tax Assessment Value Challenges
SPONSOR(S): Policy & Budget Council and Cannon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Policy & Budget Council	29 Y, 1 N, As CS	Diez-Arguelles	Hansen
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 194.301, F.S., provides that in challenges to the assessment of property determined by the property appraiser, the assessment is presumed correct unless the taxpayer can overcome the presumption.

This bill amends s. 194.301, F.S., by placing on the property appraiser the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, in order for the assessment to be presumed correct.

Also, the bill provides that the taxpayer has the burden of proving by a preponderance of the evidence that the assessment exceeds just value or that the assessment is based on appraisal practices that are different from the appraisal practices generally applied to comparable property within the same class. Finally, the bill provides that in an appeal of the VAB's decision by the property appraiser, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.

In VAB or court proceedings challenging the denial of an exemption or assessment classification, the bill provides that the property appraiser does not have a presumption of correctness.

The bill also provides legislative intent that the legislature rejects any court decisions that have relied on a standard which required the taxpayer to prove that the property appraiser's assessment was not supported by any reasonable hypothesis of a legal assessment.

The Revenue Estimating Conference has estimated that the provisions of this bill will result in lower assessments of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on local government tax revenues is estimated to exceed \$135.9 million in FY 2008-09, increasing to at least \$724.8 million in FY 2012-13.

The bill takes effect upon becoming law.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes -- The bill will provide a lower threshold for taxpayers to successfully challenge the assessment of property subject to property taxation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 193.011, F.S., sets forth eight factors that the property appraiser must consider in arriving at the just value (fair market value) of property for ad valorem tax purposes. These factors are:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (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, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (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, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Chapter 194, F.S., sets forth procedures for a taxpayer to challenge the assessment of property by the property appraiser. The taxpayer may either petition the Value Adjustment Board (VAB) or file a petition in circuit court. If the taxpayer is not successful before the VAB, he or she may file a petition in

circuit court. The property appraiser may appeal the decision of the VAB, if certain criteria set forth in s. 194.036(1), F.S. are met.

Section 194.301, F.S., provides that in both the VAB and the courts, the assessment determined by the property appraiser is presumed correct unless the taxpayer can overcome the presumption in one of two ways:

(1) The taxpayer can show by a preponderance of the evidence that the property appraiser has failed to consider properly the criteria in s. 193.011 or that the assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. If the taxpayer shows either of these facts, the presumption of correctness is lost, and the taxpayer must prove by a preponderance of the evidence that the assessment is in excess of just value.

(2) If the taxpayer cannot make the showing described in (1), the property appraiser's assessment retains the presumption of correctness and the taxpayer must prove by clear and convincing evidence that the assessment is in excess of just value (fair market value).

Black's Law Dictionary defines clear and convincing evidence and preponderance of the evidence as follows:

Preponderance of the evidence -- The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

Clear and convincing evidence -- Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

Proposed Changes

The bill amends s. 194.301, F.S., by placing on the property appraiser the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, in order for the assessment to be presumed correct.

Also, the bill provides that the taxpayer has the burden of proving by a preponderance of the evidence that the assessment exceeds just value or that the assessment is based on appraisal practices that are different from the appraisal practices generally applied to comparable property within the same class. Finally, the bill provides that in an appeal of the VAB's decision by the property appraiser, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.

In VAB or court proceedings challenging the denial of an exemption or assessment classification, the bill provides that the property appraiser does not have a presumption of correctness.

The bill also provides legislative intent that the legislature rejects any court decisions that have relied on a standard which required the taxpayer to prove that the property appraiser's assessment was not supported by any reasonable hypothesis of a legal assessment.

C. SECTION DIRECTORY:

Section 1. Amends s. 194.301, F.S.

Section 2. Provides legislative intent

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Revenue may incur additional expenditures to amend existing rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill will result in lower assessments of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on tax revenues is estimated to exceed \$135.9 million in FY 2008-09, increasing to at least \$724.8 million in FY 2012-13.

2. Expenditures:

The bill's provisions placing on the property appraiser the burden of going forward in assessment challenges and the burden of proving that the denial of an exemption or classification complies with applicable laws will likely require additional expenditures by the property appraiser.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers are likely to prevail more often in challenges to valuation assessments and thereby reduce the assessed value of their property.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE) – the amount of property taxes that a school district must levy in order to participate in the Florida Education Finance Program (FEFP). The provisions of this bill will reduce the property tax base that is available for RLE. If the legislature were to set a RLE amount designed to maintain the current RLE millage rate, the RLE amount collected would be less than under current law by \$36.4 million in FY 2008-09, increasing to \$194.2 million in 2012-13.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that municipalities and counties have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from the decline in the tax base caused by taxpayers being more successful in challenging assessments. The bill does not appear to qualify for an exception or exemption.

If the mandates provision applies, and in the absence of an applicable exemption or exception, Article VII, section 18(b) of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Revenue may have to amend some existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 1, 2008, the Policy and Budget Council adopted two amendments. One amendment added mass appraisal standards to the appraisal practices that the property appraiser must show he complied with in order to retain the presumption of correctness. The other amendment removed the bill's requirement that the property appraiser must prove the basis for a denial of an exemption or classification application, and provided that the property appraiser does not have a presumption of correctness in a challenge to such a denial. This analysis reflects the amendments.