

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires all counties to hire special magistrates. It also requires the Department of Revenue to develop a uniform policies and procedures manual for use by the value adjustment boards, and to provide training to special magistrates.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides for the creation of a value adjustment board (board) in each county. The board consists of three members of the governing body of the county and two members of the school board.¹ The clerk of the governing body of the county is the clerk of the value adjustment board. The office of the county attorney is counsel to the board unless the county attorney represents the property appraiser. If the county attorney represents the property appraiser, then the board must appoint private counsel.²

The board meets for the following purposes:

- Hearing petitions relating to assessments filed pursuant to s. 194.011(3), F.S.
- Hearing complaints relating to homestead exemptions as provided for under s. 196.151, F.S.
- Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under s. 196.011, F.S.
- Hearing appeals concerning ad valorem tax deferrals and classifications.³

At present, no uniform policies and procedures exist for which the boards are required to use.

Current law requires counties with populations in excess of 75,000 people to appoint special magistrates. The board must appoint special magistrates for the purpose of taking testimony and making recommendations to the board. The board may act upon those recommendations without further hearing. Special magistrates may not be elected or appointed officials or employees of the county but must be selected from a list of those qualified individuals who are willing to serve as special magistrates.⁴

Effect of Bill

The bill changes the composition of the value adjustment board, and initially requires all members to be private citizens who are not members of the governing body of the county or the school board. Employees of either of these bodies are also precluded from serving. The bill requires the Department of Revenue (DOR) to develop a uniform policies and procedures manual for use by boards, special magistrates, and taxpayers in board proceedings. It also requires both DOR and the property appraisers to make the manual available on their existing websites.

The bill amends s. 194.015, F.S., to preclude county attorneys from serving as counsel to the board.

The bill amends s. 194.034, F.S., to require the special magistrate to accurately and completely preserve all testimony, and in making recommendations to the value adjustment board to include

¹ Section 194.015, F.S.

² The private counsel must have over five years of legal practice experience. The private counsel receives compensation established by the board. Section 194.015, F.S.

³ Section 194.032(1)(a), F.S.

⁴ Section 194.035(1), F.S.

proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. It also requires all counties to appoint special magistrates, regardless of its population. Prior to appointment, the board must verify the qualifications of the special magistrate.

The DOR is required to provide training for special magistrates with an emphasis on the assessment of tangible personal property. Training must be offered at least once a year in at least five locations throughout the state. Boards that provide training for special magistrates must advertise the training sessions and must allow taxpayers to attend those sessions.

Finally, the bill amends s. 194.037, F.S., to amend the public notice requirements by adding a column concerning the petitions withdrawn or settled prior to the board's consideration.

C. SECTION DIRECTORY:

Section 1 amends s. 194.011, F.S., to require the Department of Revenue to develop a uniform policies and procedures manual for use in proceedings before value adjustment boards.

Section 2 amends s. 194.015, F.S., to delete provisions relating to county attorneys as counsel for value adjustment boards.

Section 3 amends s. 194.034, F.S., to require recommendations of special magistrates to include certain information.

Section 4 amends s. 194.035, F.S., to apply to all counties a requirement that value adjustment boards appoint special magistrates for certain purposes.

Section 5 amends s. 194.037, F.S., to revise required information in the disclosure of tax impact form to include certain additional information.

Section 6 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has not been to a Revenue Estimating Impact Conference. The bill appears to create an unknown fiscal impact on the Department of Revenue, as it requires the Department to develop a uniform policies and procedures manual for use in proceedings before value adjustment boards. It also requires the Department to provide training for special magistrates at least once each year in at least five locations throughout the state. According to the Department, unless it can "charge a fee for delivery of special magistrate training, the fiscal impact on the Property Tax Oversight Program would be significant."⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

⁵ Department of Revenue 2008 Bill Analysis, HB 909, March 18, 2008, at 5 (on file with the Committee on State Affairs).

2. Expenditures:

The bill appears to create an unknown fiscal impact on local governments because all property appraisers are required to appoint special magistrates. In addition, value adjustment boards providing training for special magistrates are required to advertise those training sessions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses can expect more uniformly in tax proceedings before special magistrates.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Article VII, s. 18(b) and (c), Florida Constitution, are not applicable because the bill does not reduce the percentage of a state tax shared with counties or municipalities, nor does the bill reduce the authority that counties and municipalities have to raise revenue in the aggregate. The mandates provision of Article VII, s. 18(a), Florida Constitution, may be applicable if the bill requires the expenditure of funds greater than \$1.9 million.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Revenue to develop a uniform policies and procedures manual for use by value adjustment boards, special magistrates, and taxpayers. The Department of Revenue states that it "questions whether it has the necessary legal authority to produce a manual that defines tax policy in a constitutionally mandated local matter such as property tax administration, collection and appeals process. This manual would be an agency rule under Chapter 120 and would require rule development workshops and rule hearings prior to adoption by the Governor and Cabinet."⁶

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Committee on State Affairs adopted a strike-all amendment and reported the bill favorable with amendment.

The strike-all amendment added to the bill's provisions, changes to the composition of the value adjustment boards. It increases the composition from three to five members and provides criteria for appointment of those members. The strike-all amendment also provides that if the value adjustment board overturns the determination of a property appraiser, then the board must order the refunding of the filing fee.

On April 9, 2008, the Government Efficiency & Accountability Council reported HB 909 favorably with a Council

⁶ Department of Revenue 2008 Bill Analysis, HB 909, March 18, 2008, at 6 (on file with the Committee on State Affairs).

Substitute to incorporate the substitute amendment adopted by the Council which conforms the bill to the Senate companion and precludes taxpayers from having the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis.