

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 909 Value Adjustment Boards  
**SPONSOR(S):** Government Efficiency & Accountability Council and Nehr  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>6 Y, 1 N</u>	<u>Levin</u>	<u>Williamson</u>
2) <u>Government Efficiency &amp; Accountability Council</u>	<u>11 Y, 0 N, As CS</u>	<u>Levin/Dykes</u>	<u>Cooper</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u>Diez-Arguelles</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Current law provides for the creation of a value adjustment board (board) in each county. The board's purpose is to hear petitions from property owners regarding actions of the property appraiser. The board consists of three members of the governing body of the county and two members of the school board. At present, no uniform policies and procedures exist for use by the boards.

The bill changes the composition of the value adjustment board from elected officials to private citizens. It also requires the Department of Revenue to develop a uniform policies and procedures manual for use by the boards, special magistrates, and taxpayers in board proceedings.

Current law authorizes the office of the county attorney to serve as 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. The bill precludes county attorneys from serving as counsel to the board.

Current law requires counties with populations in excess of 75,000 people to appoint special magistrates. The bill requires all value adjustment boards 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.

The bill requires the special magistrate to accurately and completely preserve all testimony, and in making recommendations to the value adjustment board, the special magistrates must include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The Department of Revenue is required to provide annual training for special magistrates.

Finally, the bill contains legislative intent regarding the burden of proof in valuation cases and expressly rejecting court cases setting forth an outdated standard of proof.

The bill creates an unknown, but significant, fiscal impact on the Department of Revenue and on local governments. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT section of this bill analysis for further details.

The bill may require a two-thirds vote because it is a mandate. See MANDATES section of analysis.

The bill takes effect on July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** 4/13/2008

## 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 purpose of the board is to hear petitions from property owners regarding actions of the property appraiser. The board consists of three members of the governing body of the county and two members of the school board.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

##### **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.

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<sup>1</sup> Section 194.015, F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 194.032(1)(a), F.S.

<sup>4</sup> Section 194.035(1), F.S.

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 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.

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 revise the membership of the board and to delete provisions relating to county attorneys as counsel for value adjustment boards.

Section 3 amends s. 194.035, F.S., to require that all boards use special magistrates.

Section 4 amends s. 194.037, F.S., to revise required information in the disclosure of tax impact form to include certain additional information.

Section 5 Sets forth legislative intent regarding the burden of proof in valuation challenges.

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 creates an unknown, but significant, fiscal impact on the Department of Revenue. The bill it requires the Department to develop a uniform policies and procedures manual for use in proceedings before value adjustment boards. Also, it 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."<sup>5</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

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

The bill appears to create an unknown, but potentially significant, fiscal impact on local governments. The bill requires all boards to appoint special magistrates and to appoint private counsel to represent the board.

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 appears to apply because the bill requires the expenditure of funds by counties. At this time, the amount of the expenditures is not known. If the statewide expenditures exceed \$1.9 annually, a county may not have to comply with the provisions of this bill, unless the legislature determines that this bill fulfills an important state interest and the law is passed by a two-thirds vote of the membership of each house.

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.”<sup>6</sup>

C. DRAFTING ISSUES OR OTHER COMMENTS:

The meaning of the language in Section 5 of the bill is unclear as to whether the entire court decisions are rejected or just the portions of the decisions relying on the outdated standard of proof.

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.

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

On April 9, 2008, the Government Efficiency & Accountability Council reported HB 909 favorably with a Council Substitute to incorporate the substitute amendment adopted by the Council which conforms the bill to the Senate companion and, in addition, provides legislative intent language regarding taxpayers having the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis.