

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 521 Ad Valorem Tax Assessment Challenges
SPONSOR(S): Economic Development & Community Affairs Policy Council; Military & Local Affairs Policy Committee; Lopez-Cantera and others
TIED BILLS: IDEN./SIM. BILLS: SB 1006

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Military & Local Affairs Policy Committee, Economic Development & Community Affairs Policy Council, Finance & Tax Council, and empty rows.

SUMMARY ANALYSIS

Section 194.301, F.S., provides that in challenges to the ad valorem tax assessment determined by the property appraiser, the assessment is presumed correct unless the taxpayer can overcome the presumption. If the property appraiser retains the presumption, the taxpayer must prove by clear and convincing evidence that the assessment exceeds just value.

The bill amends Section 194.301, F.S., and places 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.

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 appraisal practices applied to comparable property within the same class.

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. In such actions, the taxpayer must show, by a preponderance of the evidence, the entitlement to the exemption or assessment classification.

The bill also provides legislative intent that the legislature rejects any court decisions since 1997 that have cited a standard that required a 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 determined that the provisions of this bill will have no impact on state government and a negative fiscal impact on local governments of \$157 in FY 2009-10, increasing to \$693.5 million in FY 2013-14, assuming current millage rates.

The bill is effective upon becoming law and applies to assessments in 2009.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Just Valuation

Article VII, s. 4 of the Florida Constitution mandates the Legislature to prescribe regulations that “shall secure a just valuation of all property for ad valorem taxation.” The term “just valuation” and “fair market value” have been used interchangeably to mean what a willing buyer and willing seller would agree upon as a transaction price for the property.<sup>1</sup> This requirement is implemented by section 193.011, F.S., and requires property appraisers to consider the following factors in determining just valuation: (1) the present cash value of the property;<sup>2</sup> (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;<sup>3</sup> (3) the location of the property;<sup>4</sup> (4) the quantity or size of the property;<sup>5</sup> (5) the cost of the property and the replacement value of the improvements on the property;<sup>6</sup> (6) the condition of the property;<sup>7</sup> (7) the income from the property;<sup>8</sup> and (8) the net proceeds from the sale of the property.<sup>9</sup>

In determining fair market value, the property appraiser must consider, but not necessarily use, each of the enumerated factors. The method of valuation, and the weight assigned to each factor, is at the property appraiser's discretion, and the determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.<sup>10</sup>

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

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 81, 85-86 (Fla.1965)

<sup>2</sup> § 193.011(1), F.S.

<sup>3</sup> § 193.011(2), F.S.

<sup>4</sup> § 193.011(3), F.S.

<sup>5</sup> § 193.011(4), F.S.

<sup>6</sup> § 193.011(5), F.S.

<sup>7</sup> § 193.011(6), F.S.

<sup>8</sup> § 193.011(7), F.S.

<sup>9</sup> § 193.011(8), F.S.

<sup>10</sup> *See Blake v. Xerox Corp.*, 447 So.2d 1348 (Fla. 1984).

- (1) Showing by a preponderance of the evidence that the property appraiser has failed to properly consider the criteria in s. 193.011, F.S., 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 either factor is met, 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 presumption of correctness is retained, and the taxpayer must prove by **clear and convincing evidence** that the assessment is in excess of just 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.

### **Effect of Proposed Changes**

The bill provides that the property appraiser has the burden of proving that the ad valorem tax assessment of value was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards. If the property appraiser meets this burden, then the assessment is presumed correct.

The bill also provides that the taxpayer must show, by a preponderance of the evidence, that the assessed value exceeds just value or that the assessment is based on appraisal practices that differ from appraisal practices generally applied to comparable property within the same class. In judicial actions in which the property appraiser challenges the VAB's determination of value, the property appraiser must show, by a preponderance of the evidence, that the determination of value is less than just value. These burdens of proof apply to assessment challenges after the assessment is revised and remanded to the property appraiser by a VAB or court.

If the assessment is determined to be incorrect, the VAB or the court can establish the assessment if competent substantial evidence exists which meets the requirements of s. 193.011, F.S., and professionally accepted appraisal practices, including but not limited to, mass appraisal standards, if appropriate.

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. In such actions, the taxpayer must show, by a preponderance of the evidence, the entitlement to the exemption or assessment classification.

The bill also provides legislative intent that the legislature rejects any court decisions that have cited a standard that required a taxpayer to prove that the property appraiser's assessment was not supported by any reasonable-hypothesis of a legal assessment. The bill provides that this expression of legislative intent clarifies existing law and applies retroactively.

**B. SECTION DIRECTORY:**

- Section 1: Amends s. 194.301, F.S., regarding the burden of proof in assessment challenges.
- Section 2: Provides legislative intent.
- Section 3: Provides an effective date of upon becoming law and applies to assessments in 2009.

**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 determined that the provisions of this bill will have a negative fiscal impact on local governments of \$157 million in FY 2009-10, increasing to \$693.5 million in FY 2013-14, assuming current millage rates.
2. Expenditures:  
The requirement that the property appraiser prove that the assessment was arrived at by complying with Section 193.011, F.S., and with professionally accepted appraisal practices may cause the property appraiser to incur additional expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Taxpayers are more likely to prevail 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.

**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 exemption.

If the mandates provision applies, and in the absence of an applicable exemption, 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.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2009, the Economic Development & Community Affairs Policy Council adopted an amendment which allows the Value Adjustment Board or the court to establish the assessment if the initial assessment is determined to be incorrect instead of the prior standard of erroneous

On March 11, 2009, the Military & Local Affairs Policy Committee proposed a committee substitute for HB 521. This proposed committee substitute was reported favorably with no additional amendments.

This analysis reflects the committee substitute adopted by the Military & Local Affairs Policy Committee.