

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 7215      PCB FTC 10-08      Property Taxation

**SPONSOR(S):** Economic Development & Community Affairs Policy Council, Finance & Tax Council and Bogdanoff

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	11 Y, 0 N	Diez-Arguelles	Langston
1)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Noriega	Tinker
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill makes changes to several areas dealing with property taxation.

- Under current law, non-homestead property that has benefitted from the 10 percent annual assessment increase limitation must be reassessed when there is a change of ownership or control. One way in which a change of ownership or control occurs is when there is a cumulative transfer of more than 50 percent of the ownership of the legal entity that owns the property. The bill provides that, for a publicly traded company, a change of ownership or control does not occur when the cumulative transfer of 50 percent of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to transfers made through a merger or acquisition. Owners of property to which the 10 percent limitation applies are required to notify the property appraiser when there is a change of ownership or control. The bill provides that if the change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded instrument serves as notice to the property appraiser;
- The bill directs the Department of Revenue (DOR) to produce a form that can be used by a property owner to provide notice to multiple property appraisers of all Florida property that the owner owns or controls for which a transfer of ownership or control has occurred;
- The bill adds structures or improvements used for horticulture production for the purpose of frost and freeze protection consistent with the Department of Agriculture and Consumer Services' interim measures or best management practices, to the list of items that must be assessed, under the income methodology, as if they were part of the land, as opposed to being assessed as a separate structure;
- Current law states that, after January 1 of any year, the rental of an entire homestead during two consecutive years constitutes the abandonment of the homestead, resulting in the loss of the homestead exemption and the Save Our Homes benefit. The bill replaces the words "an entire," with the phrase "all or substantially all of a";
- The bill clarifies that cities and counties can provide ad valorem tax exemptions to new or expanding businesses, with referendum approval, for more than two 10-year periods;
- This bill establishes a whistleblower reward for reporting illegal or improper homestead exemptions; and
- The bill provides for property appraisers to consider the presence of a cancer cluster when determining the assessed value of a property located within the area where the cancer cluster exists.

The provisions of this bill will have an overall indeterminate impact on local government revenues. The provisions dealing with change of ownership will have a negative indeterminate impact. The provision dealing with structures used in horticulture will have a recurring negative fiscal impact of \$0.1 million. The provisions dealing with homesteads will have a positive indeterminate impact.

Sections 8 and 9 of the bill have an effective date of upon becoming law. The bill's other sections have an effective date of July 1, 2010.

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

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## 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:

This bill makes changes to four areas dealing with property taxation. Each of these areas is discussed separately below.

##### Reassessment Due to Change of Ownership

For purposes of determining the value of property for ad valorem taxes, Florida law limits the amount by which assessments can increase from one year to the next for three classes of property. Homestead property annual assessment increases are limited to the lesser of 3 percent or the percentage change in the Consumer Price Index.<sup>1</sup> For residential property containing 9 or fewer units<sup>2</sup> and for other nonresidential property<sup>3</sup> annual assessment increases are limited to 10 percent.

Upon the occurrence of certain events, however, properties whose assessments have been limited are reassessed at just value (fair market value). Homestead property is reassessed when it loses homestead status or when its ownership changes.<sup>4</sup> Residential real property containing nine or fewer units is reassessed whenever there is a "change of ownership or control."<sup>5</sup> Other nonresidential real property is reassessed whenever there is a qualifying improvement or a "change of ownership or control."<sup>6</sup>

The phrase "change of ownership or control" means "any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value . . . ."<sup>7</sup>

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<sup>1</sup> Article VII, s. 4(d), Florida Constitution and s. 193.155, F.S.

<sup>2</sup> Article VII, s. 4(g), Florida Constitution and s. 193.1554, F.S.

<sup>3</sup> Article VII, s. 4(h), Florida Constitution and s. 193.1555, F.S.

<sup>4</sup> Section 193.155, F.S.

<sup>5</sup> Section 193.1554(5), F.S.

<sup>6</sup> Section 193.1555(5), F.S. A qualifying improvement is defined as one that increases the just value of the property by at least 25 percent.

<sup>7</sup> Sections 193.1554(5) and 193.1555(5)(b), F.S.

This bill provides that there is no change of ownership for purposes of reassessing property at just value “if, for a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not include a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.”

#### Notice of Change of Ownership or Control

Owners of property subject to the 10 percent assessment limitation described above are required to notify the property appraiser of any change of ownership or control.<sup>8</sup> Owners who fail to notify the property are subject to back taxes, interest of 15 percent per annum and a penalty of 50 percent of the taxes avoided.<sup>9</sup>

The bill provides that if the change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded deed or instrument serves as notice to the property appraiser.

Also, the bill requires the Department of Revenue (DOR) to provide a form that can be used by a property owner to provide notice to multiple property appraisers of all Florida property that the owner owns or controls for which a transfer of ownership or control has occurred.

#### Assessment of Certain Structures Used for Horticulture

Pursuant to Article VII, section 4 of the Florida Constitution, agricultural land may be assessed solely on the basis of its character or use. For property to be classified as agricultural land, it must be used “primarily for bona fide agricultural purposes.”<sup>10</sup>

Once property is qualified to receive agricultural classification, the property appraiser must assess the land based solely on its agricultural use, considering the following use factors only:

- the quantity and size of the property;
- the condition of the property;
- the present market value of the property as agricultural land;
- the income produced by the property;
- the productivity of land in its present use;
- the economic merchantability of the agricultural product; and
- such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.<sup>11</sup>

For purposes of the income methodology approach to the assessment of property used for agricultural purposes, irrigation systems, pumps, or motors physically attached to the land are considered a part of the average yields per acre and have no separately assessable contributory value.<sup>12</sup> Litter containment

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<sup>8</sup> Section 193.1556, F.S.

<sup>9</sup> Id.

<sup>10</sup> Section 193.461(3)(b), F.S.

<sup>11</sup> Section 193.461(6)(a), F.S.

<sup>12</sup> Section 193.461(6)(c), F.S.

structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms are similarly treated.<sup>13</sup>

The bill provides that structures or improvements used for horticulture production for the purpose of frost and freeze protection consistent with the Department of Agriculture and Consumer Services' interim measures or best management practices adopted pursuant to s. 570.085 or s. 403.067(7)(c), F.S., must be assessed by the same methodology as irrigation systems described above.

#### Abandonment of Homestead Property

Section 196.061, F.S., provides that, after January 1 of any year, the rental of an entire dwelling unit previously claimed as a homestead constitutes abandonment of the dwelling as a homestead, and leads to the loss of the homestead exemption and the Save Our Homes assessment increase limitation. However, rental of the homestead property after January 1 of any year does not affect the homestead exemption so long as the property is not so rented during 2 consecutive years.

The bill deletes the phrase "an entire," and replaces it with the phrase "all or substantially all of a." After this change, s. 196.061, F.S., will state that "the rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute abandonment of the dwelling as a homestead, and such abandonment . . ."

The bill defines the term "rental," as used in s. 196.061, F.S., as any rental, lease, license, or other similar agreement by which the owner is compensated for use of the dwelling by tenants or guests.

#### Economic Development Ad Valorem Tax Exemption

Section 196.1995, F.S., allows a county or municipality to grant an ad valorem tax exemption to new or expanding businesses. The granting of the exemption may only be accomplished pursuant to a referendum and for 10-year periods. The current statute is unclear regarding whether a county or municipality may use the exemption for more than two consecutive 10-year periods.

The bill clarifies that the statute may be used multiple times, so long as each 10-year period is approved by referendum.

#### Whistleblower Reward for Reporting Illegal or Improper Homestead Exemptions

This bill creates an unspecified statutory section to establish a whistleblower reward for reporting illegal or improper homestead exemptions.

Under this section, a person may report to the property appraiser's office a possible homestead exemption violation if he or she believes a homestead exemption, as described in s. 196.031, F.S.,<sup>14</sup> has been granted to a person who is not entitled to such exemption. If the property appraiser verifies that a homestead exemption was illegally or improperly obtained, the tax collector, after collecting any back taxes and resulting penalties, must pay the person who reported the violation a reward of 25 percent of the penalties collected, not to exceed \$500. The reward must be paid from the penalties recovered by the tax collector in connection with the reported violation.

The bill provides that a tax collector may pay a reward to only one person for reporting each verified homestead exemption violation. If more than one person reports a violation pertaining to the same property, the person who first reported the violation via the appropriate reporting method will receive the reward.

In addition, the bill provides for DOR to create a form for reporting suspected homestead exemption violations. This form must be available on DOR's website, and each property appraiser must provide printed forms upon request. Submitted forms must include the name and address of the person reporting the suspected violation, the address of the property suspected of illegally or improperly receiving a homestead exemption, and the basis for suspecting that a homestead exemption violation

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<sup>13</sup> Id.

<sup>14</sup> Section 196.031, F.S., addresses "exemption of homesteads."

has occurred. The property appraiser must stamp each submitted form with the date and time of the day of the submittal immediately upon receipt.

#### Assessment of Properties in Areas Where a Cancer Cluster is Present

This bill creates s. 193.1553, F.S., to provide for property appraisers to consider the presence of a cancer cluster when determining the assessed value of property. This section becomes effective upon this bill becoming law.

Under this bill, the term "cancer cluster" means a higher than expected number of a particular type of cancer occurring in a local community over a defined period of time.

This bill provides that, when the existence of a cancer cluster has been confirmed by the Department of Health or the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, the property appraiser is directed to take into consideration the presence of the cancer cluster when determining the assessed value of property located within the area where the cancer cluster exists.

The property appraiser is also directed to consider the latest available information regarding the effect of the cancer cluster on assessed values, including sales occurring after January 1, prior to determining the assessed value of the affected properties.

This section expires July 1, 2017, unless reviewed and reenacted by the Legislature on or before that date.

#### Effective Dates

Sections 8 and 9 of the bill have an effective date of upon becoming law. The bill's other sections have an effective date of July 1, 2010.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 193.1554, F.S., relating to assessment of nonhomestead residential property.
- Section 2. Amends s. 193.1555, F.S., relating to assessment of certain residential and nonresidential real property.
- Section 3. Amends s. 193.1556, F.S., relating to notice of change of ownership or control required.
- Section 4. Amends s. 193.461, F.S., relating to agricultural lands; classification and assessment.
- Section 5. Amends s. 196.061, F.S., relating to rental of homestead to constitute abandonment.
- Section 6. Amends s. 196.1995, F.S., relating to economic development ad valorem tax exemption.
- Section 7. Creates an unspecified statutory section relating to whistleblower reward for reporting illegal or improper homestead exemptions.
- Section 8. Creates s. 193.1553, F.S., relating to assessment of properties located in an area where a cancer cluster is present.
- Section 9. Provides effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

2. Expenditures:

DOR has indicated that the provisions of this bill will have no fiscal impact on its operations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The provisions of this bill will have an overall indeterminate impact on local government revenues. The provisions dealing with change of ownership will have a negative indeterminate impact. The provision dealing with structures used in horticulture will have a recurring negative fiscal impact of \$0.1 million. The provisions dealing with homesteads will have a positive indeterminate impact.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that own properties in multiple counties in the state will experience some savings from using the form promulgated by DOR and by having recorded instruments serve as notice of change of ownership.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision may apply because this bill affects the authority that counties or municipalities have to raise revenues in the aggregate. However, at this time, whether the impact is positive or negative, and its magnitude, is unknown.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOR has indicated that the provisions of this bill would require minor changes to Rule 12D-8.0061.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On April 16, 2010, the Economic Development & Community Affairs Policy Council adopted the following three amendments and reported the bill favorably as a Committee Substitute:

- amendment #1 revised the horticulture production language to refer to structures or improvements used for the purpose of frost and freeze protection consistent with the Department of Agriculture and Consumer Services' interim measures or best management practices;

- amendment #2 created an unspecified statutory section to establish a whistleblower reward for reporting illegal or improper homestead exemptions; and
- amendment #3 provided for property appraisers to consider the presence of a cancer cluster when determining the assessed value of property located within the area where the cancer cluster exists.

This analysis reflects the amendments adopted by the Economic Development & Community Affairs Policy Council.