

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1766

INTRODUCER: Community Affairs Committee and Senator Storms

SUBJECT: Assessment of Real Property/Challenge Proceedings

DATE: March 25, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) amends the current effects of a property appraiser or petitioner’s failure to timely comply with requests for evidentiary information prior to value adjustment board (VAB) hearings. The CS directs the Department of Revenue (Department) to adopt rules that would allow VAB parties to cross-examine any witness and would provide for the random selection of special magistrates by a value adjustment board that is not influenced by the property appraiser.

The CS further provides that Department rules shall require the property appraiser, the Department, and the Auditor General to obtain written consent from a taxpayer prior to sharing the taxpayer’s financial records with other authorized entities and shall require such parties to return a taxpayer’s financial records within 10 days after receipt if requested by the taxpayer. The CS provides that certain individuals who deliberately or intentionally disclose tax return information and property appraisers who attempt to influence the selection of a special magistrate shall be considered to have engaged in an act of misfeasance or malfeasance, which may result in removal from office.

This CS substantially amends the following sections of the Florida Statutes: 193.074, 194.011, 194.034, 194.035, 195.027.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹ Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.²

Article VII of the Florida Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year unless good cause is shown for extension.³ As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate⁴ necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage

¹ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

² Section 196.185, F.S.

³ Section 193.1142, F.S.

⁴ The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. See s. 200.069, F.S. See also Florida Department of Revenue website, *Local Government Property Tax Process*, available at <http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf> (last visited on Nov. 3, 2010).

rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.⁵ The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board shall be created for each county composed of two members from the county governing board, one member from the school board and two citizen members. Section 194.035, F.S., requires counties with a population of more than 75,000, and allows counties with a population less than 75,000, to appoint special magistrates to take testimony and provide recommendations to the board.

The value adjustment board is required to meet no earlier than 30 and no later than 60 days after the mailing of assessment notices pursuant to s. 194.011, F.S. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.⁶

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser's assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Taxpayers must file assessment appeals within 25 days after the TRIM notice is mailed.⁷ Tax exemption or classification appeals must be filed by the taxpayer within 30 days after the property appraiser mails a notice denying an application.⁸ Appeals on denied tax deferrals must be filed within 20 days after the tax collector mails the denial.⁹ A county value adjustment board may charge a taxpayer a nonrefundable fee up to \$15 upon filing a petition.¹⁰

After filing a petition and at least 25 days prior to the hearing, the taxpayer receives notice of the date, time, and location of the hearing along with the property record card containing relevant information that was used in computing the taxpayer's current assessment.¹¹ Prior to the hearing the taxpayer will be given the option to exchange evidence with the property appraiser. Section

⁵ Section 200.065, F.S.

⁶ Section 194.032(1)(a)1.-4., F.S.

⁷ Section 194.011(3), F.S.

⁸ *Id.*

⁹ Florida Department of Revenue website, *Petitions to the Value Adjustment Board* available online at <http://dor.myflorida.com/dor/property/vab/pdf/vabguide.pdf> (last visited on March 7, 2011).

¹⁰ See 194.013, F.S. "However, this fee is \$5 per parcel in cases where a petition includes multiple parcels with similar characteristics." See Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

¹¹ Section 194.032(2), F.S.

194.034, F.S., precludes any information that was requested by the property appraiser and knowingly not provided by the taxpayer from being used at the hearing.¹²

At the hearing both the petitioner and the property appraiser may be represented by an attorney or agent and shall present testimony and other evidence.¹³ The hearing shall be conducted in the manner prescribed by Department of Revenue rules with the ability of either party to request that all witnesses be sworn in. Following the decision by the VAB, the property appraiser submits a revised certified tax roll to each taxing authority. If the taxpayer does not agree with the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

Confidentiality of Tax Returns

Section 193.074, F.S., provides that all returns of property and returns required by former s. 201.022, F.S., that are submitted by the taxpayer are deemed to be confidential in the hands of the:

- Property appraiser,
- Clerk of the circuit court,
- Department of Revenue,
- Tax collector,
- Auditor General,
- Office of Program Policy Analysis and Government Accountability (OPPAGA), and
- Employees and persons acting under the supervision and control of these individuals.

The confidentiality requirements in this section do not apply in instances where there is a court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters. Such returns are also exempt from the public record inspection and copying requirements provided in s. 119.07(1), F.S.¹⁴

Department of Revenue Rules and Regulations

Section 195.027, F.S., directs the Department of Revenue to develop reasonable rules and regulations for the assessment and collection of taxes which are to be followed by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards.¹⁵ Subsection (3) of s. 195.027, F.S., requires that such Department rules and regulations provide procedures:

. . . whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property which records are required to make a determination of the proper assessment as to the particular property in question.

¹² Section 194.032(1)(d), F.S.

¹³ Section 194.032(1)(a), F.S.

¹⁴ See s. 119.07(1)(a)-(i), F.S.

¹⁵ Section 195.027(1), F.S.

Access to such records shall only be provided in instances where they are necessary in order to determine the classification or value of the nonhomestead property. The access is further limited to those records that pertain to the property that is physically located in the taxing county as of January 1 of each year and to the income from such property.¹⁶

All records that are produced by the taxpayer under s. 195.027, F.S., are deemed to be confidential in the hands of the:

- Property appraiser,
- Department,
- Tax collector, and
- Auditor General.

As such, these parties are prohibited from divulging taxpayer records obtained under this section “to any person, firm or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.”¹⁷

Such returns are also exempt from the public record inspection and copying requirements provided in s. 119.07(1), F.S.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 193.074, F.S., to state that the deliberate or intentional disclosure of any tax returns without the written consent of the taxpayer shall constitute misfeasance or malfeasance, and may be grounds for removal from office.

Section 2 amends s. 194.011, F.S., to make clarifying amendments and to delete the current effect of a property appraiser’s failure to timely comply with request for evidentiary information and replace it with new language stating that the VAB may not consider evidence or documentation that the *petitioner or property appraiser* failed to provide to the other party within the time specified in this subsection.

Section 3 amends s. 194.034, F.S., to make clarifying amendments and to delete current provisions that prohibit the petitioner, the board, or the special magistrate from introducing information that was requested by the property appraiser of which the petitioner/taxpayer knowingly failed to produce. This section also requires Department of Revenue rules pertaining to VAB hearings to allow parties to cross-examine any witness.

Section 4 amends s. 194.035, F.S., to require the Department of Revenue to create a process by rule for the random selection of special magistrates by a value adjustment board that does not allow the property appraiser to have influence over the selection of the Special Magistrate. The CS states that an attempt to influence the selection of a special magistrate by the property appraiser constitutes misfeasance or malfeasance and may be grounds for removal from office. The CS deletes current provisions addressing the selection of special magistrates.

¹⁶ Section 195.027(3), F.S.

¹⁷ *Id.*

¹⁸ *See* s. 119.07(1)(a)-(i), F.S.

Section 5 amends s. 195.027(3), F.S., to provide that a taxpayer's failure to provide financial records relating to nonhomestead property shall not preclude the trier of fact in a judicial or administrative proceeding from considering those records to determine the just value of the taxpayer's property.

This section further states that rules and regulations prescribed by the Department of Revenue shall require the property appraiser, the Department, and the Auditor General to return the taxpayer's financial records within 10 days after receipt if requested by the taxpayer. Department rules must also require the property appraiser, the Department, or the Auditor General to provide advance notice to the taxpayer if the taxpayer's financial records are shared with another entity that is authorized under this subsection to request access to those records. Such notice must include an explanation of the purpose for sharing the records.

Section 6 provides that this act shall take effect upon becoming law and shall apply to all administrative or judicial proceedings to challenge an assessment of real property pending or initiated on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Private and Government Sector Impact below.

B. Private Sector Impact:

Individuals challenging assessments or denials of exemptions will now be permitted under Department rule to cross-examine any witness.

Triers of fact will no longer be precluded from introducing or considering information that a taxpayer failed to provide in an evidentiary request for nonhomestead property during a judicial or administrative proceeding to determine just value of the taxpayer's property.

C. Government Sector Impact:

Any individual authorized to obtain returns under s. 193.074, F.S., who deliberately or intentionally discloses any confidential tax records without the written consent of the taxpayer and any property appraiser who attempts to influence the selection of a special magistrate shall be considered to have engaged in an act of misfeasance or malfeasance and may be removed from office.

The Department of Revenue will need to implement new rules pertaining to VAB hearings and the selection of special magistrates as directed in this CS. The Department states that the new requirements in sections 1 and 4 of this CS requiring the written consent of the taxpayer prior to any exchanges of evidence “will prevent the Department and other agencies from obtaining the confidential information they need from the property appraiser to perform their statutory duties.”¹⁹ The Department further indicated that these changes will impact the Department’s compliance determination process and the ability to timely review taxpayer data.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on April 4, 2011:**

This CS reinserts the confidentiality of tax returns for orders from an administrative body having quasi-judicial powers in ad valorem tax matters and amends s. 194.035, F.S., to direct the Department of Revenue to create a process by rule for the random selection of special magistrates by a value adjustment board and states that an attempt to influence the selection of a special magistrate by the property appraiser constitutes misfeasance or malfeasance and may be grounds for removal from office.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ Florida Department of Revenue, *SB 1766 Agency Fiscal Analysis*, at 4 (March 15, 2011) (on file with the Senate Committee on Community Affairs).