

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 Budget Subcommittee on Finance and Tax

BILL: SB 2042
INTRODUCER: Budget Subcommittee on Finance and Tax
SUBJECT: Administration of Property Tax
DATE: March 29, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Fournier	Diez-Arguelles	BFT	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill clarifies ambiguous language and corrects drafting errors in the property tax statutes. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the Department of Revenue’s role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 192.001, 192.117, 193.114, 193.122, 193.155, 193.1554, 193.1555, 193.501, 193.503, 193.505, 194.011, 194.032, 194.034, 194.035, 194.037, 194.171, 195.096, 195.0985, 195.099, 196.031, 196.081, 196.082, 196.091, 196.101, 296.121, 196.202, 196.24, 197.122, 197.182, 197.2301, 197.253, 197.3041, 197.3073, 197.323, 200.065, 218.12, and 218.125.

II. Present Situation:

Section 195.002, F.S., provides that the Department of Revenue (department) shall have general supervision of the assessment and valuation of property, and over tax collection and all other aspects of the administration of such taxes. In its supervisory roll, the department from time to time identifies provisions of Florida Statutes that appear to contain drafting errors, are inconsistent with other statutory provisions, or are not consistent with efficient tax administration. This bill contains recommendations, suggested by the department and approved by the Governor and Cabinet, to address some of these issues.

In 2008 Florida voters approved Amendment 1 to the State Constitution, which increased the homestead exemption, provided portability of the Save Our Home tax limitation, and limited assessment increases for non-homestead property. The Legislature has also made significant changes to property tax statutes in recent years—imposing limitations on local millage rates, changing the value adjustment board (VAB) process, and changing the burden of proof in assessment challenges. Since these changes have been in effect, it has become apparent that some of the language implementing them contained drafting errors, left certain questions unanswered, or created administrative difficulties. Inconsistencies with other statutory provisions have also been uncovered, creating further challenges in implementing the constitutional and statutory changes.

III. Effect of Proposed Changes:

This bill clarifies ambiguous language and corrects drafting errors that have become apparent since these property tax law changes were implemented. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the department's role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

(See section by section analysis below.)

Section 1

Present situation: Section 192.001, F.S., provides definitions of terms used in the statutes governing the imposition of ad valorem taxes. Some of these definitions have not been amended to conform to changes that have been enacted in other ad valorem statutes.

Proposed change: This bill amends the definitions of “assessed value of property” to make it consistent with Art VII of the Florida Constitution, as amended in 2008. It amends “complete submission of the rolls” to conform to s. 193.114, F.S., as amended in 2008.

Section 2 repeals s. 192.117, F.S., which created the Property Tax Administration Task Force. This task force was dissolved in 2004.

Section 3

Present situation: Subsection (2) of s. 193.114, F.S., lists items that must be included on the real property assessment roll. When this section was amended in 2008, some of the changes made at that time used terms that are inconsistent with established practice and terminology, and this has led to confusion for the property appraisers.

Proposed change: Paragraph (n) of this subsection is amended to change the recorded selling price requirement from the two most recently recorded selling prices to the recorded selling prices required by s. 193.114, F.S., and to replace the term “sale price” with “recorded selling price” to clarify that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. The term “sale” is replaced with “transfer” to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1

year before the assessment date, and up to the date the roll is submitted to the department, must be included on the assessment roll. "Transfer date" is defined as the date on which the transfer document was signed and notarized, and sale qualification decisions must be recorded on the assessment roll within 3 months after the deed or other transfer instrument is recorded or otherwise discovered.

Paragraph (p) is amended to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Section 4

Present situation: Subsection (4) of s. 193.122, F.S., provides that the property appraiser must appeal a value adjustment board decision within 30 days of recertification under subsection (3) of that section.

Proposed change: Effective July 1, 2011 and applying to assessments beginning with the 2011 tax year, this subsection is amended to clarify that the appeal must be made within 30 days after the date the decision is rendered. This conforms to other changes made in the bill to clarify the timeline for appealing VAB decisions, however, it may lead to additional uncertainty because there is no official record of this date comparable to the recertification date.

Section 5

Present situation: Subsection (8) of s. 193.155, F.S., allows a taxpayer to transfer certain amounts of his or her Save Our Home assessment limitation to a newly-acquired homestead, but the transfer must be applied for by a certain date in order to get the full benefit of the transfer. The statute refers to an application for "homestead" instead an application for "assessment" under this subsection, and questions have been raised about whether this reference is correct.

Proposed change: Effective July 1, 2011, the bill amends the language to clarify that the required application is for "assessment" instead of "homestead" and that the assessment reduction is calculated as if the application had been timely filed.

Sections 6 and 7

Present situation: Amendment 1, approved by the voters in 2008, provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. Sections 193.1554 and 193.1555, F.S., which implement this provision, require that property be assessed at just (full) value the first year the property is "placed on the tax roll." It is not clear from the statutory language that "placed on the tax roll" is meant to include property that was already on the roll in a different classification, although the fiscal impact estimates provided at the time were based on that assumption.¹ These sections also provide for assessment of combined or divided parcels, but do not specify how to assess parcels that are combined or divided after the assessment date but before the tax bills are sent.

¹ In *Sommers v. Orange County Property Appraiser, et.al.*, a recent summary judgment issued by the Ninth Judicial Circuit Court, it was ruled that the Sommers were entitled to the 10 % assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S.

Proposed change: These sections are amended to clarify that property must be assessed at full value when it is subject to a new limitation, and that parcels combined or divided after January 1 are not considered combined or divided for purposes of assessment until the January 1 that the parcels are first assessed as combined or divided, even though they are combined or divided for purposes of the tax notice.

Sections 8, 9 and 10

Present situation: Sections 193.501, 193.503, 193.505., F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively. The statutes require repayment of the reduced tax liabilities if the use is not maintained for the required period, and local tax collectors are required to report this repayment information to the department. These repayments are rare and this information is not needed by the department.

Proposed change: These sections are amended to delete the reporting requirement.

Section 11 and Sections 31- 33

Present situation: Sections 194.011(3)(d), 197.253(2)(b), 197.3041(2)(b), and 197.3073(2)(b), F.S., provide conflicting requirements regarding the time allowed to file a petition for homestead tax deferral. Section 194.011, F.S., provides 30 days following the mailing of the notice by the property appraiser, but the sections in ch. 197 provide 20 days.

Proposed change: These provisions are amended to provide the 30-day window of opportunity, and s. 194.011, F.S., is amended to include cross-references to all homestead tax deferral provisions.

Section 12

Present situation: An obsolete provision in s. 194.032(2), F.S., requires a petitioner to wait at least 4 hours for his or her VAB hearing before being able to file in circuit court, even though a petitioner is no longer required to exhaust all administrative remedies (i.e., the VAB) before filing a circuit court petition.

Proposed change: This section repeals the obsolete statutory language providing the 4 hour waiting requirement for filing in circuit court, and limits the waiting time for petitioners to a “reasonable time.”

This section also creates a new subsection that prescribes how the VAB must handle a complaint that a special magistrate did not follow the requirements of state law. It provides that a special magistrate is subject to removal from serving in that capacity upon being found to have failed to follow the requirements of state law.

Section 13

Present situation: Section 194.034(2), F.S., requires the VAB clerk to provide notice to taxpayer petitioners, property appraisers, and the department of board decisions.

Proposed changes: This subsection is amended to delete the requirement that the department be notified of every VAB decision. It allows the department to request notification or relevant statistics.

Section 14

Present situation: Section 194.035(1), F.S., provides that, subject to an appropriation, the department will reimburse certain counties for their special magistrate expenses, and the department will establish a reasonable range for special magistrate payments. No appropriations have been provided for these payments.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, these provisions are deleted from the statute.

Section 15

Present situation: Section 194.037(1), F.S., requires the clerk of each VAB to provide a public notice of the findings and results of VAB actions, and prescribes the format of this notice. One of the required elements of the notice is the net change in taxable value as a result of VAB actions. It does not specify which taxable value—county, school board, or special district—is to be reported.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, this subsection is amended to specify that the change in county taxable value is to be reported by the clerk.

Section 16

Present situation: When a VAB petitioner receives a decision from the board, the petitioner has 60 days in which to contest the decision in circuit court. There is confusion on when the 60 days begins—some courts have based the time frame on the date the VAB decision is mailed, but others have used the date the property appraiser first certifies the assessment roll prior to mailing the decision. Taxpayers that appeal to the circuit court without using the VAB process have 60 days from the date the roll is certified to initiate the appeal. It is sometimes difficult to determine this date.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, s. 194.171(2), F.S., is amended to begin the 60 day window of opportunity to appeal to the circuit court on the date the VAB decision is mailed or otherwise transmitted to the petitioner, or on the tax notice postmark date if a VAB appeal is not made.

Sections 17 and 18

Present situation: Sections 195.096 and 195.0985, F.S., require the department to report the results of its in-depth review of the assessment rolls of each county. The findings must be published and copies must be forwarded to legislative staff and county officials. The statutory reporting requirements contain different reporting dates and redundant requirements.

Proposed change: The bill amends subsections (2) and (3) of s. 195.096 to standardize reporting requirements for the in-depth assessment roll review, and repeals s. 195.0985, F.S., which contains a redundant requirement.

Section 19

Present Situation: Section 195.099, F.S., requires the department to review the assessment of new, rebuilt, or expanded businesses in designated enterprise zones or “brownfield” areas.

Proposed change: This section is amended to allow the department to review these assessments as the need arises for such review.

Section 20

Present Situation: Section 196.031, F.S., specifies the order in which various exemptions are applied to homestead property. Under present law, the order of exemptions has the result that some properties where only a portion of the property is homesteaded are not able to take full advantage of all the exemptions.

Proposed change: This section is amended to require that exemptions applicable to only homestead property be taken before exemptions that apply to both homestead and non-homestead property, in order to maximize the value of the exemptions.

Sections 21-24 and 26-27

Present situation: Sections 196.081, 196.082, 196.091, and 196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. In order to qualify, a taxpayer must obtain a disability letter from the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration, and the person may not receive a discount or exemption until the letter is obtained.

Proposed change: The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Section 25

Present situation: Section 196.121, F.S., requires the department to furnish printed homestead exemption forms to the property appraisers. This requirement is obsolete since the forms are provided electronically and funding for printed forms has been eliminated.

Proposed change: The bill amends this section to delete the requirement for printed forms and clarify that the department will provide electronic funds.

Sections 28-30 and Section 34

Present situation: Sections 197.122 and 197.182, F.S., require the department to review most property tax refunds and ss. 197.2301 and 197.323, F.S., provide that department approval is not required for refunds of certain tax overpayments.

Proposed change: Sections 197.122 and 197.182, F.S., are amended to require the department to periodically review tax refund procedures instead of reviewing and approving individual tax

refunds. The sections are amended to provide additional guidance to the tax collector in making refunds, and require the tax collector and property appraiser to cooperate in the conduct of the department's procedural reviews. Sections 197.2301 and 197.323, F.S., are amended to conform to changes in the refund approval process.

Section 35

Present situation: The statutory language used to limit local governments' millage rates contains a reference to the prior year's rate. In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that rate, causing uncertainty in the phrase's meaning.

Proposed change: Section 200.065(5)(a), F.S., is amended in the bill to change the phrase from "is adopted" to "was adopted".

Sections 36 and 37

Present situation: Section 218.12 and 218.125, F.S., provide for distributions to fiscally constrained counties for tax losses due to constitutional changes approved by the voters in 2008. There is no provision in the statute for addressing what happens if a county fails to apply for the distribution. The statute requires counties to report their maximum millage under ch. 200, F.S., but the citation to that chapter is not correct. Finally, distributions under both sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than the current year's rate.

Proposed change: The bill amends these sections to specify that if a county fails to apply for distribution under these sections its share reverts to the fund from which the appropriation is made. The maximum millage calculation references are corrected, and the calculation of the distribution is based on the current year millage.

Section 38 provides that, except as otherwise provided, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, provides that "except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989".² Since this bill would reduce a county or municipality's authority to raise revenue in the aggregate, it may require a two-thirds vote of the membership of each house of the Legislature for passage if the magnitude of that reduction is found to be significant for the purposes of this provision.

² FLA. CONST. art. VII, s. 18(b).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Proposed changes to ss. 196.081, 196.082, 196.091, and 196.101, 196.202, and 196.24, F.S., which provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions, have the potential to reduce local governments' property tax revenue. The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Proposed changes to ss. 193.1554 and 193.1555, F.S., which clarify that property must be assessed at full value when it is subject to a new limitation under these provisions, have the potential to increase local governments' property tax revenue.

The Revenue Estimating Conference has not evaluated the impact of this bill.

B. Private Sector Impact:

This bill has several provisions that clarify the process by which taxpayers apply for various property tax exemptions and other tax preferences.

C. Government Sector Impact:

This bill reduces the role of the Department of Revenue in receiving various reports and approving property tax refunds, and is expected to provide greater efficiency in its oversight of property tax administration. Other statutory corrections and clarifications should also reduce the department's workload with respect to property tax oversight.

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.)

None.

- B. **Amendments:**

None.

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