

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 Committee

BILL: CS/SB 1256

INTRODUCER: Budget Subcommittee on Finance and Tax and Budget Subcommittee on Finance and Tax

SUBJECT: Administration of Property Taxes

DATE: February 24, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-------------|
| 1. | Babin | Diez-Arguelles | BFT | Fav/CS |
| 2. | Babin | Rhodes | BC | Pre-meeting |
| 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 bill clarifies ambiguous language and deletes obsolete statutory provisions in the property tax statutes. It also amends statutory requirements for scheduling value adjustment board hearings, and reduces the number of reports that must be submitted to the Department of Revenue. The bill provides that only the Department of Revenue or another designated entity may review whether informal adjustments made by the property appraiser are consistent with the law. It revises statutes relating to the rental of homestead property. Finally, the bill 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.

This bill substantially amends the following sections of the Florida Statutes: 192.001, 192.0105, 192.117, 193.114, 193.1554, 193.1555, 193.501, 193.503, 193.505, 194.032, 194.034, 195.096, 195.099, 196.031, 196.061, 196.081, 196.082, 196.091, 196.101, 196.121, 196.202, 196.24, 200.065, 218.12, and 218.125.

This bill repeals section 195.0985, Florida Statutes.

II. Present Situation:

Section 195.002, F.S., provides that the Department of Revenue (department) has general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes. In its supervisory role, the department from time to time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. 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:

Section 1

Present situation: Section 192.001, F.S., defines terms used in the statutes imposing ad valorem taxes. Some of these definitions have not been amended to conform to other statutory and constitutional changes.

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

Sections 2 and 10

Present situation: Taxpayers are permitted to protest their property tax assessment through hearings before VABs. Section 194.032(2), F.S., provides guidance regarding the scheduling of hearings, including the taxpayer’s ability to reschedule a hearing once for any reason. The statute also includes an obsolete provision requiring taxpayers to wait a minimum of 4 hours for their VAB hearing before being able to file suit in circuit court. Section 192.0105, F.S., provides taxpayers certain rights with regard to the administration of property taxes, which includes the right to be heard within 4 hours of the scheduled hearing time.

Proposed change: This section repeals the obsolete statutory language providing the 4 hour waiting requirement before filing in circuit court, and it limits the waiting time for petitioners to a “reasonable time, not to exceed 2 hours.” Lastly, this section clarifies that if a taxpayer reschedules a hearing after waiting 2 hours, the taxpayer is not considered to have exercised his or her right to reschedule one time for any reason.

Section 3 repeals s. 192.117, F.S., which created the Property Tax Administration Task Force. This task force was dissolved in 2004.

Section 4

Present situation: Subsection 193.114(2), 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.

Section 193.114(4), F.S., provides guidance to the property appraiser in documenting any adjustments made pursuant to s. 194.011, F.S. Section 194.011, F.S., permits owners who object to the value placed on their property to informally confer with the property appraiser about the value and to present facts for consideration in adjusting the value.

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.

Subsection (4) is amended to provide that if the property appraiser changes a property valuation pursuant to s. 194.011, F.S., only the Department of Revenue or designated entity may review whether the change is consistent with the law.

Sections 5 and 6

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 *Sommers v. Orange County Property Appraiser, et.al.*, a recent summary judgment issued by the Ninth Judicial Circuit Court, determined 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. This ruling is being appealed.

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. These sections of the bill also clarify that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Sections 7, 8 and 9

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

Present situation: Section 194.034(2), F.S., requires the VAB clerk to notify 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 other information as provided in s. 194.037, F.S.

Sections 12 and 13

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. Additionally, s. 195.096, F.S., requires that assessment rolls be statistically sampled to ensure a 95 percent level of confidence that the sample is statistically valid. However, in some smaller jurisdictions, there is insufficient data to meet the 95 percent standard.

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. In reviewing assessment rolls, the bill requires that generally accepted ratio standards be used when a 95 percent level of confidence cannot be obtained.

Section 14

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 15

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 are not able to take full advantage of all the exemptions.

Proposed change: This section is amended to require that exemptions be applied in a manner that results in the lowest taxable value.

Sections 16

Present situation: Section 196.061, F.S., provides that rental of an entire homestead dwelling constitutes abandonment of the dwelling as a homestead. Owners sometimes rent the majority of the dwelling, but retain possession of a closet or similar limited space. In these situations, some owners have attempted to retain homestead exemption on these properties claiming that they have not rented the “entire” dwelling. A recent court decision² reviewed this type of situation and concluded that the owner had rented the “entire” property even though possession of two locked closets was retained.

Proposed change: This section is amended to clarify that rental of all or substantially all of the property constitutes abandonment of the property as a homestead.

17-19 and 21-22

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. In some instances, taxpayers have lost the ability to claim discounts and exemptions because the documentation was delayed.

Proposed change: The bill amends these sections to allow a 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. The refund is only permitted for years that are within the normal 4 year statute of limitations for refunds.

Section 20

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.

² Haddock v. Carmody, 1 So.3d 1133 (Fla. 1st DCA 2009).

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

Section 23

Present situation: In s. 200.065(5), F.S., 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. Also, s. 200.065(10), F.S., requires notice when a district school board levies additional tax pursuant to s. 1011.71(2), F.S. Since, 2008, districts have also been able to levy additional tax pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(1), F.S., do not reference those levies.

Proposed change: Section 200.065(5)(a), F.S., is amended in the bill to change the phrase from "is adopted" to "was adopted," and s. 200.065(10), F.S., is amended to also require notice when school districts levy additional property tax pursuant to s. 1011.71(3), F.S.

Sections 24 and 25

Present situation: Sections 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 also 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 26 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 "[e]xcept upon approval of each house of the legislature by two-thirds 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 revenues in the aggregate, as such authority exists on February 1, 1989." 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.

Article VII, section 18(d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2011-12), are exempt.

The Revenue Estimating Conference estimated that the bill currently would have a negative fiscal impact of \$600,000, statewide. Thus, the bill may fall under the “insignificant fiscal impact” exemption.

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., are estimated to reduce local property taxes by \$200,000, statewide.³ School taxes comprise \$100,000 of the reduction. These changes would allow qualifying taxpayers to request limited refunds of property taxes that they paid after they applied for a disability-related exemption, but before they received supporting documentation of disability from the government.

The proposed change to s. 196.031, F.S., is estimated to reduce local property taxes by \$400,000, statewide.⁴ School taxes comprise \$200,000 of the reduction. This change proposes that property tax exemptions be applied in the order that maximizes the use of exemptions by the taxpayer.

In total, the Revenue Estimating Conference has estimated that this bill will reduce local property taxes by \$600,000, statewide. School taxes comprise \$300,000 of the reduction.

³ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2012 Regular Session –Retroactive Application, SB 1256* (December 19, 2011), available at <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2012/pdf/page153-162.pdf> (last visited January 22, 2011).

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2012 Regular Session –Order of Exemptions, SB 1256* (December 19, 2011), available at <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2012/pdf/page163-170.pdf> (last visited January 22, 2011).

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.)**CS by Budget Subcommittee on Finance and Tax on January 24, 2012:**

This Committee Substitute includes 2 amendments adopted by the Subcommittee. The amendments:

- Provide that rental of all or substantially all of a homestead constitutes abandonment of homestead use of the property, and
- Provide that only the Department of Revenue, or another designated entity, may review whether an informal adjustment by a property appraiser is consistent with law.

B. Amendments:

None.