

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7097	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Economic Affairs Committee; Finance & Tax Committee; Caldwell	110 Y's	5 N's
COMPANION BILLS:	CS/CS/SB 1256	GOVERNOR'S ACTION: Pending	

SUMMARY ANALYSIS

CS/HB 7097 passed the House on February 29, 2012. The bill was amended by the Senate on March 9, 2012, and subsequently passed the House the same day. The bill contains recommendations by the Department of Revenue for property tax oversight improvements. Among other things, the bill clarifies ambiguous language, deletes obsolete statutory provisions, and eliminates unneeded reporting requirements in the property tax statutes. The bill also:

- amends statutory requirements for scheduling value adjustment board hearings;
- allows a husband and wife who abandon jointly titled homestead property to designate the percentage of the differential between just (market) value and assessed value that is portable to a new homestead property and that is attributed to each spouse;
- 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;
- amends the current order in which homestead tax exemptions are to be applied to require that the base \$25,000 homestead exemption and the additional \$25,000 non-school levy homestead exemption (which applies to assessed value from \$50,001 to \$75,000) apply before all other homestead exemptions, which are then to be applied in a manner that results in the lowest taxable value;
- requires the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county that informs taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission;
- provides that, effective retroactively to the 2012 tax roll, all property of municipalities of this state shall be exempt from ad valorem taxation when used as an essential ancillary function of a facility constructed with financing obtained in part by pledging proceeds from the tax authorized under s. 212.0305(4), F.S., that is upon exempt or immune Federal, State or County property;
- provides an exemption for certain property used exclusively for educational purposes;
- clarifies that rental of all or substantially all of a dwelling previously claimed to be a homestead constitutes abandonment of such dwelling as a homestead;
- updates the list of operations for which certain deployed servicemembers may receive an additional homestead exemption;
- clarifies that certain nonhomestead property is to be assessed at just value when it is subject to a new assessment limitation. The bill also amends these provisions to provide that parcels combined or divided are not to be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. The bill further provides 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.

The Revenue Estimating Conference estimated negative impacts to school tax revenue of \$1.75 million beginning in fiscal year 2013-14. Reductions in local government non-school tax revenues are estimated to be \$2.55 million in fiscal year 2012-13, with a recurring negative revenue impact of \$2.45 million.

The bill takes effect upon becoming law, except as otherwise provided in the bill.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Locally elected officials administer Florida's property tax system. The Department of Revenue (Department) is responsible for general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes.¹ In this role, the Department from time to time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. Most of the statutory changes in the bill were suggested by the Department and approved by the Governor and Cabinet, to address these types of issues.

Definitions

Current 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 Changes

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.

Value Adjustment Board Hearing Wait Time Limit

Current Situation

Taxpayers have the right to petition the value adjustment board (VAB) over objections to their property tax assessments, denial of homestead or other property tax exemptions, and appeals concerning property tax deferrals and classifications.² Section 194.032, F.S., outlines the timetable and procedure for VAB hearings. Taxpayers previously were required to exhaust their administrative remedies prior to filing an action in circuit court related to these matters.³ There is a vestige of this prior requirement in s. 194.032, F.S., whereby taxpayers who had waited four hours after the scheduled hearing time would be deemed to have exhausted their administrative remedies and thereby be permitted to file an action in circuit court.

Proposed Change

The bill amends the VAB hearing procedure in s. 194.032, F.S., and limits the amount of time a petitioner may be required to wait for his or her hearing after the scheduled time to "a reasonable time, not to exceed 2 hours." If the hearing is not commenced within this time, the petitioner may leave and the clerk must reschedule the hearing, though this rescheduled hearing is not counted against the

¹ Section 194.011, F.S.

² Sections 194.011 and 194.032, F.S.

³ See *Stiles v. Brown*, 177 So.2d 672 (Fla.App.1965), affirmed 182 So.2d 612 (Fla. 1966) finding that appearance before the Board of Equalization [predecessor of the current VABs] was a necessary "exhaustion of administrative remedies" and a prerequisite to filing a lawsuit. See also ch. 80-274, L.O.F., which added language now contained in s. 194.034(1)(b), F.S., that legislatively eliminated that prerequisite:

(b) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011.

taxpayer's one-time right to reschedule a hearing for any reason.⁴ The bill also amends the Taxpayer's Bill of Rights in s. 192.0105(2)(d), F.S., to conform to the amendments in s. 194.032, F.S., described here.

Repeal of the Property Tax Administration Task Force

Current Situation

The Property Tax Administration Task Force was created in s. 192.117, F.S., in 2001 for the purpose of serving as a forum for bringing issues in property tax administration to the Department, of providing and evaluating suggestions for improving the property tax administration process, and of promoting greater understanding of property tax administration issues. Under s. 20.03(8), F.S., a task force created by statute can exist for a maximum of three years. Accordingly, this task force was dissolved in 2004, rendering s. 192.117, F.S., obsolete.

Proposed Change

The bill repeals s. 192.117, F.S.

Real Property Assessment Roll Components

Current Situation

Section 193.114(2), F.S., provides a list of items that must be included on the real property assessment roll prepared by the property appraiser. Among these items, paragraph (n) requires the sale price, sale date, and basis for qualification or disqualification for an arms-length transaction for each sale of the property in the previous year to be included on the roll. Paragraph (p), requires the name and address of the owner or fiduciary responsible for the payment of taxes on the property.

Proposed Change

The bill amends s. 193.114(2)(n), F.S., to replace the term "sale price" with "recorded selling price," clarifying that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. "Sale date" is replaced with "ownership transfer date" 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 roll. "Ownership transfer date" is defined as the date that the deed or other transfer instrument is signed and notarized or otherwise executed.

The bill clarifies that if, subsequent to the initial decision qualifying or disqualifying a transfer of property, the property appraiser obtains information indicating that the initial decision should be changed, the property appraiser may change the qualification decision and, if so, must document the reason for the change in a manner acceptable to the executive director or the executive director's designee.

The bill also amends s. 193.114(2)(p), F.S., to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

⁴ Taxpayers may reschedule their VAB hearing one time for any reason. See section 194.032(2), F.S.

Homestead Assessments

Present Situation

Section 193.155, F.S., provides for homestead assessments. Currently, if two or more persons abandon jointly owned and titled homestead property, and one or more such persons who received a homestead exemption establish a new homestead, each person is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus its assessed value divided by the number of such owners, unless the title of the property contains specific ownership shares.

Proposed Change

The bill amends s. 193.155, F.S., to provide that a husband and wife who abandon jointly titled homestead property may designate the percentage attributed to each spouse of the differential between just (market) value and assessed value that is portable to a new homestead property. The parties must be husband and wife at the time that the jointly owned property is abandoned. They must file a form with the property appraiser prior to either person applying for the portable differential, and the designation, once made, is irrevocable.

Assessment of Nonhomestead Residential Property; Assessment of Certain Residential and Nonresidential Real Property

Current Situation

Article VII, sections 4(g) and (h) of the Florida Constitution, provide, among other things, that the assessed value of certain nonhomestead property cannot increase more than 10 percent over the prior year. These provisions are implemented in ss. 193.1554 and 193.1555, F.S. Both sections require property to be assessed at just value [fair market value] when the property is “placed on the tax roll.” The Department has interpreted this language to apply to situations where property that was already on the roll changes classifications, such as from homestead to nonhomestead, although this interpretation is currently being litigated.⁵

Sections 193.1554 and 193.1555, F.S., also govern how such property is assessed when parcels are merged or split. However, these provisions do not specify how an increase in the just value from combining or dividing the parcels should be calculated and apportioned.

Proposed Change

The bill amends ss. 193.1554, F.S., and 193.1555, F.S., to clarify that property is to be assessed at just value when it is subject to a new limitation. The bill also amends these provisions to provide that parcels combined or divided in this section cannot be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. These sections further provide 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.

⁵ In December 2010, in *Sommers v. Orange Cnty. Prop. Appraiser*, No. 2010-CA-012489-O (Fla. 9th Cir. Ct. 2010), *pending appeal*, the Ninth Judicial Circuit Court ruled that the Sommers were entitled to the 10 percent 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. *See* Case No. 5D11-240 (Fla. 5th DCA).

Reporting for Certain Tax Liabilities by Tax Collectors

Current Situation

Sections 193.501, 193.503, and 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.⁶ These provisions require repayment of the amount of reduced liability if the qualifying use is not maintained for the required period. Tax collectors must annually report to the Department the amount of repayments made under these sections.

Proposed Change

These provisions are amended to remove the reporting requirement.

Notification of Value Adjustment Board's Decision

Current Situation

Section 194.034(2), F.S., provides that when a petitioner challenges a property assessment through the VAB, and the VAB is required to render a written decision, the clerk is required to mail a notification of the decision to various parties, including the Department.

Proposed Change

The bill amends s. 194.034(2), F.S., by removing the clerk's duty to notify the Department of every decision of the board. In place of that requirement, the bill provides that the clerk must provide a copy of the decision (or information relating to the tax impact of the findings and results as provided in s.194.037, F.S.) to the Department upon the Department's request.

Department Assistance in an Active Investigation of a Property Appraiser

Current Situation

Section 195.072, F.S., currently provides that state agencies and departments are authorized and directed to render such necessary aid and assistance to the Department of Revenue as is required to enable the Department to carry out its functions of insuring just valuation and equitable administration of property taxes in this state

Proposed Change

The bill amends s. 195.072, F.S., to provide that the Department shall render such aid and assistance as may be required in an active investigation of a property appraiser by a state agency by providing procedural and valuation assistance as it relates to the property appraiser's property tax administrative duties.

Department's Review of Assessment Rolls

Current Situation

The Department is required to conduct an in-depth review of the assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county

⁶ Constitutional authority provided in Art. VII, ss. 3(f) and 4(b).

officials.⁷ Statistical sampling used in the review of assessment rolls must meet a 95 percent confidence level. However, in some instances, there is insufficient data to meet the 95 percent confidence level standard.

Section 195.0985, F.S., requires the Department to annually publish sales ratio studies for counties after approving the tax roll assessments in those counties.

Proposed Change

The bill amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the 95 percent confidence level requirement, when a 95 percent level of confidence is not attainable. Instead of being required to forward the findings to the Senate and the House of Representatives committees with oversight responsibilities, the bill directs the Department to publish its findings and notify legislative staff and county officials that such publication has occurred. Copies of the data and findings will be provided upon request.

This bill also repeals s. 195.0985, F.S., eliminating a redundant requirement.

Department's Review of Assessments for Certain Businesses

Current Situation

Section 195.099, F.S., requires the Department to periodically review the assessments of new, rebuilt, and expanded businesses in designated enterprise zones⁸ or brownfield areas.⁹

Proposed Change

The bill amends this provision to remove the Department's mandatory review requirement and, instead, permits the Department to review these assessments.

Tax Exemption of Homesteads

Current Situation

Section 196.031(7), F.S., specifies the order in which various exemptions are applied to homestead property that is not totally exempt from ad valorem taxation. Under current law, the order of exemptions could result in some properties not being able to take full advantage of all the exemptions.

Proposed Change

The bill amends s. 196.031(7), F.S., to require that the base \$25,000 homestead exemption and the additional \$25,000 non-school levy homestead exemption (which applies to assessed value from \$50,001 to \$75,000) apply before all other homestead exemptions, which are then to be applied in a manner that results in the lowest taxable value.

⁷ Section 195.096(2), F.S.

⁸ Section 193.077(3), F.S.

⁹ Section 196.1995, F.S.

Rental of Homestead to Constitute Abandonment

Current 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 decision¹⁰ 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

The bill amends this section to clarify that rental of all or substantially all of the property constitutes abandonment of the property as a homestead.

Delay in Disability Exemption

Current Situation

Sections 196.081, 196.082, 196.091, 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. To qualify for these discounts and exemptions, a taxpayer must first provide evidence of the disability by obtaining certification of the disability from specified sources, depending upon the specific discount or exemption, such as the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration; the taxpayer 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 receipt of 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 receiving the necessary 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 four year statute of limitations for property tax refunds.

Printed Forms for Tax Exemptions

Current Situation

Section 196.121(1), F.S., requires the Department to furnish hard-copy, printed forms to the property appraiser of each county for taxpayers to use when claiming a homestead exemption.

Proposed Change

This bill amends s. 196.121(1), F.S., by removing the requirement that the Department provide printed forms; in its place, the bill provides that the Department shall provide the forms by electronic means or other methods designated by the Department.

¹⁰ *Haddock v. Carmody* 1 So.3d 1133, 1135 (Fla.App. 1 Dist.,2009)

Exemption for Deployed Servicemembers

Current Situation

Section 196.173, F.S., provides an exemption for servicemembers that are deployed outside the continental United States, Alaska, or Hawaii in support of certain named military operations. Currently, the list of qualifying operations includes Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn. The beginning and ending dates for each operation are identified. However, Operation New Dawn was continuing at the time the statute was last updated. Thus, it does not include an ending date.

Proposed Change

The bill amends s. 196.173, F.S., to include an ending date for Operation New Dawn, which ended on December 15, 2011. The statute is also amended to provide for two new qualifying operations – Operation Noble Eagle, which began on September 15, 2001, and Operation Odyssey Dawn, which began on March 19, 2011 and ended on October 31, 2011.

The bill provides an exception to the March 1 application deadline in s. 196.173(5), F.S., for 2012 only, by establishing June 1, 2012, as the deadline for an eligible servicemember to file a claim for an additional tax exemption for qualifying deployment during the 2011 calendar year. Any applicant who fails to meet the June 1 deadline must subsequently submit an application to the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s.194.011(1), F.S. Upon receipt of the application, the property appraiser may grant the tax exemption if the property appraiser determines the applicant failed to meet the application deadline due to extenuating circumstances.

If the property appraiser determines that extenuating circumstances did not prevent an applicant from meeting the deadline and denies the application, the applicant may file a petition with the value adjustment board requesting that the exemption be granted. No filing fee is due for this petition. The value adjustment board may grant the exemption for the current year if the board determines that extenuating circumstances existed.

Educational Property Exemption

Current Situation

Section 196.198, F.S., provides an ad valorem exemption for educational institutions and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes. This section also contains several provisions specifying circumstances under which the exemption applies.

Proposed Change

The bill amends s. 196.198, F.S., to provide that land, buildings, and other improvements to real property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the land is a nonprofit entity and the land is used, under a ground lease or other contractual arrangement, by an educational institution that owns the buildings and other improvements to the real property, is a nonprofit entity under s. 501(c)(3) of the Internal Revenue Code, and provides education limited to students in prekindergarten through grade 8.

Government Property Exemptions from Tax

Current Situation

Section 196.199, F.S., contains the statutory provisions related to exemption from property tax of certain government owned property.

Section 212.0305(4), F.S., authorizes certain counties to levy convention development taxes on transient rental transactions. Generally, the revenues may be used for capital construction of convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary according to the particular levy.¹¹

Proposed Change

The bill adds language to s. 196.199(1), F.S., that provides that all property of municipalities of this state shall be exempt from ad valorem taxation when used as an essential ancillary function of a facility constructed with financing obtained in part by pledging proceeds from the tax authorized under s. 212.0305(4), F.S., that is upon exempt or immune Federal, State or County facility, or property.

Method for Fixing Millage; Notice of Intent to Levy Additional Taxes

Current Situation

Section 200.065, F.S., provides the method for fixing the maximum millage rate that local governments can levy. To determine this maximum rate, the section refers to the prior year's rate and sets the cap at the rate that would have been levied in the prior year if the maximum millage rate had been applied, *unless a higher rate is adopted*.¹² In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that millage rate, causing uncertainty in the phrase's meaning.

Additionally, this section requires a district school board to publish notice of intent to levy additional taxes under s. 1011.71(2), F.S. Since 2008,¹³ district school boards have also been able to levy additional taxes pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(10), F.S., do not reference those levies.

Proposed Change

The bill amends s. 200.065(5), F.S., by replacing "is adopted" with "was adopted." The bill also amends the notice requirement in s. 200.065(10), F.S., to require the district school board to publish a notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Fiscally Constrained County Distribution

Current Situation

Sections 218.12 and 218.125, F.S., direct the legislature to appropriate moneys to be distributed to fiscally constrained counties¹⁴ to offset reductions in ad valorem tax revenue experienced as a result of

¹¹ Section 212.0305(4)(a), F.S., authorizes the consolidated county convention development tax (applicable to Duval County), s. 212.0305(4)(b), F.S., authorizes the charter county development tax (applicable to Miami-Dade County) and s. 212.0305(4)(c)-(e), F.S., authorize the special district, special and subcounty convention development taxes respectively (these apply in three separate taxing districts in Volusia County).

¹² Section 200.065(5), F.S.

¹³ Ch. 2008-142, L.O.F.

¹⁴ Defined in s. 218.67(1), F.S.

certain amendments to Article VII of the Florida Constitution in 2008.¹⁵ These provisions contain an application process for such fiscally constrained counties, including documentation requirements that require counties to report their maximum millage under chapter 200, F.S. This citation is incorrect. Additionally, distributions under these sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than using the current year's millage rate.

Proposed Change

The bill corrects the maximum millage calculation references, and the calculation of the distribution is corrected to be based on the current year millage. The bill also provides that if a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have no impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated negative impacts to school tax revenue of \$1.75 million beginning in fiscal year 2013-14. Reductions in local government non-school tax revenues are estimated to be \$2.55 million in fiscal year 2012-13, with a recurring negative revenue impact of \$2.45 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁵ Am. C.S. for S.J.R. 2-D, 2007; adopted Jan. 2008 (providing, inter alia, a 10% cap on increase of assessed value of nonhomestead residential real property); Ams. Proposed by Taxation and Budget Reform Commission, Revision No. 4, 2008, filed with the Secretary of State April 28, 2008; adopted Nov. 2008 (providing exemptions and limitations on the assessed value of property held in perpetuity for conservation purposes and used for conservation purposes).