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 Committee on Appropriations

BILL:	SB 1830
INTRODUCER:	Appropriations Committee
SUBJECT:	Ad Valorem Taxation
DATE:	April 18, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin	Hansen		**AP SPB 7130 as introduced**
2.	Babin	Hansen	AP	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

SB 1830 updates property tax statutes.

The Revenue Estimating Conference (REC) estimates that the provisions of this bill that repeal the ability of limited liability partnerships to qualify for the affordable housing property tax exemption will increase local property tax revenue by $23.4 million in Fiscal Year 2013-2014.

The REC has not completed its review of the provisions of this bill that exempt certain commonly-owned property used for educational purposes. Staff estimates that these changes will reduce local government property tax revenue by an insignificant amount (less than $50,000).

The bill:

- Accommodates the use of commercial mail delivery service by taxpayers,
- Authorizes the use of electronic mail by property appraisers and value adjustment boards,
- Requires notices related to tax roll certification to be provided on websites,
- Provides long-term lessees the ability to retain homestead limitations in certain instances,
- Conforms appeal and penalty provisions,
- Provides for an automatic renewal for "granny flat" assessment reductions,
- Deletes a statutory requirement related to homestead that has been ruled unconstitutional by the Florida Supreme Court,
- Clarifies the ability of local governments to provide property tax exemptions for persons 65 and older,

- Repeals the ability for limited liability partnerships to qualify for the affordable housing property tax exemption,
- Exempts property used for educational purposes when the entities that own the property and the educational facility are commonly owned, and
- Amends the calculation of payments required by Martin County to St. Lucie County related to the county boundary line change passed in 2012.

The bill substantially amends the following sections of the Florida Statutes: 192.047, 193.122, 193.155, 193.703, 196.031, 196.075, 196.1978, and 196.198.

The bill substantially amends chapter 2012-45, Laws of Florida.

The bill creates section 192.130, Florida Statutes.

II. Present Situation:

The present situation for each section of the proposed bill has been included below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1 - Filing Dates for Returns and Applications

Present situation: Section 192.047, F.S., instructs property tax administrators to determine the date a person filed a property tax return or an application for exemption or special classification by using the United States Postal Service postmark date. Taxpayers that use commercial mail delivery service do not receive a United States Postal Service postmark date, and thus, may not receive the same amount of time to file returns and applications.

Proposed change: The proposed bill amends the date of filing provisions to allow a postmark from the United State Postal Service or a commercial mail delivery service to be considered the date of filing for returns and applications.

Section 2 - Electronic Notices Related to Property Taxes

Present situation: Property appraisers must periodically mail notices of proposed property taxes, renewal applications for exemptions, and notices of intent to deny certain exemptions to taxpayers. Value adjustment boards are required to mail board decisions to property appraisers and petitioners.

Proposed change: The proposed bill creates s. 192.130, F.S., authorizing property appraisers to obtain permission from taxpayers to provide notices of proposed property taxes, renewal applications for certain exemptions and notices of intent to deny exemptions by electronic mail (email), rather than by mail. The proposed bill authorizes value adjustment boards to obtain permission to provide board decisions by email, rather than by mail.

In order to provide these items by email, property appraisers and value adjustment boards are required to obtain consent from the recipient in writing and verify the email address of the recipient. If a document is sent by email and the email is returned undeliverable, the property appraiser and value adjustment board must send the item by mail. Documents sent by email must comply with statutory requirements as to notice and form. The sender must renew the consent and verification requirements every 5 years.

Section 3 - Publication of Notice Concerning Certified Assessment Rolls

Present situation: After property appraisers certify their property assessment rolls, they are required to publish a notice of the date of certification in a local periodical meeting certain statutory requirements as to publication frequency, etc.

Proposed change: The proposed bill requires property appraisers to publish the notices of the date of certification on their websites in addition to the notices published in a local periodical.

Section 4 - Ad Valorem Tax – Homestead Exemption and Assessment Limitations

Present situation: Florida provides ad valorem tax exemptions and assessment limitations for homestead property.[1] Both property owners and long-term lessees[2] are entitled to homestead exemptions and assessment limitations if they use their property as a homestead.

Property generally is assessed at just value on January 1 of the year following a "change in ownership." A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title.[3] However, certain title transfers—a transfer of title to correct an error, a transfer between legal and equitable title, and a transfer when the owner is listed as both a grantor and grantee—do not constitute a change of ownership when the person entitled to the homestead does not change after the transfer of title.

Proposed change: For long-term lessees that qualify for homestead tax exemptions and limitations, the proposed bill adds to the list of transfers that do not constitute a change of ownership a transfer of title that occurs when the person who is entitled to the homestead tax treatment is a long-term lessee entitled to homestead pursuant to s. 196.041(1), F.S., and that lessee continues to be entitled to homestead treatment after the transfer of title.

Present situation: When a homestead owner sells homestead property and purchases a new homestead, he or she is entitled to transfer a portion of the assessment limitation accrued on the prior homestead to his or her new homestead.[4] Property appraisers determine the amount of assessment limitation that can be transferred and, if the property owner disagrees, the property owner can appeal to the value adjustment board.[5] Property owners can appeal the value

[1] See generally Fla. Const. Art. VII, ss. 4 and 6
[2] Lessees are entitled to homestead exemptions and assessment limitations if they use the property as a homestead and have a lease of at least 98 years (50 years if executed prior to June 19, 1973). See s. 196.041(1), F.S.
[3] Section 193.155(3)(a), F.S.
[4] See Fla. Const. Art. VII, s. 4(d)(8)
[5] Section 193.155(8)(l), F.S.

adjustment board decision to circuit court, but must do so within 15 days following the value adjustment board decision.[6]

Proposed change: The proposed bill extends the time for property owners to appeal value adjustment board decisions on transfers of assessment limitations from 15 to 60 days, which will align this court filing time frame with the general court filing time frame provided for challenges to tax assessments.[7]

Section 5 - Homestead Exemption; Living Quarters for Parents and Grandparents; Application

Present situation: Counties may provide a reduction in assessed value for living quarters constructed on homestead property for the purpose of providing living quarters for parents or grandparents (granny flats).[8] The authority for the granny flats reduction is in chapter 193, F.S., and thus, counties cannot use their current authority to waive the annual application requirement; the property owner must apply for the assessment reduction every year.

If a property owner claiming the granny flats reduction willfully makes a false statement when applying for the reduction, a civil penalty of not more than $1,000 applies, and the property does not qualify for the reduction for 5 years.

Proposed change: The proposed bill amends the granny flats reduction to allow counties to waive the annual application requirement. Additionally, the proposed bill requires property owners to notify the property appraiser when the property owner no longer qualifies for the reduction. The proposed bill removes the civil penalty and 5 year disqualification provisions from the granny flats reduction, and inserts authorization to assess for any reductions improperly claimed for the prior 10 years, a penalty equal to 50 percent, and 15 percent interest per year. The property appraiser would be required to give the property owner 30 days to pay the assessment; after 30 days, the property appraiser must file a lien against all property of the property owner in the county. If a taxpayer improperly receives the reduction due to a clerical mistake or omission of the property appraiser, the property appraiser may not impose penalty or interest.

Section 6 - Homestead Exemption; Dependents Residing on the Property

Present situation: The statute implementing Florida's homestead exemption requires the property owner to live on the property in order to qualify for the exemption.[9] In 2012, the Florida Supreme Court held that the Florida Constitution grants homestead exemption to a property owner when a dependent of the property owner lives on the property, regardless of whether the owner lives on the property.[10]

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[6] *Id.*
[7] See s. 194.171(2), F.S.
[8] See s. 193.703, F.S.
[9] Section 196.031(1)(a), F.S., provides, in part, that "[e]very person who, on January 1, has . . . title . . . to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption . . . ." (emphasis added).
[10] See *Garcia v. Andonie*, 101 So. 3d 339 (Fla. 2012).

Proposed change: The proposed bill removes the statutory requirement that, in order to qualify for homestead exemption, the owner of homestead property must live on the property when a dependent lives on the property.

Section 7 - Additional Homestead Exemption – Person Age 65 or Older

Present situation: Since 1999, counties have been authorized to grant additional homestead exemptions up to $50,000 to persons who are 65 or older and who satisfy certain low-income requirements.[11]

In 2012, the voters approved a constitutional amendment allowing counties to provide an alternative additional exemption for the amount of homestead property with a just value less than $250,000.[12] The implementing legislation[13] inadvertently amended the original 1999 authority, causing concern that additional exemptions lower than $50,000 were no longer authorized.

Proposed change: The proposed bill clarifies that counties are authorized to grant additional homestead exemptions lower than $50,000.

Section 8 - Ad Valorem Tax Exemption – Affordable Housing Property

Present situation: Since 1999, Florida has provided an ad valorem exemption for affordable housing property when the property is wholly-owned by a non-profit corporation that qualified as a charitable 501(c)(3) organization and meets certain other statutory requirements. In 2009,[14] the statute was amended to also allow property to qualify if it was owned by a limited liability partnership and the only general partner of the limited liability partnership was a non-profit corporation that qualified as a charitable 501(c)(3) organization. Since the change was enacted, several for-profit limited liability partnerships have restructured to take advantage of the tax exemption.

Proposed change: The proposed bill amends the affordable housing property exemption to remove the authority of a limited liability partnership that merely has a non-profit general partner that is a charitable 501(c)(3) organization to qualify for the exemption.

Section 9 - Educational Property

Present situation: An educational institution and its property are exempt from ad valorem tax in Florida.[15] Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts

[11] See s. 196.075, F.S.
[12] Amendment 11, 2012 General Election. The amendment originated as CS/HJR 0169 (2012). The text of the amendment can be found on the website of the Florida Department of State at http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-89.pdf (last visited March 18, 2013).
[13] Ch. 2012-57, Laws of Florida.
[14] The original 2009 legislation was ruled to have violated the unfunded mandate provision of the Florida Constitution, Article VII, section 18(a), and potentially the single subject rule of the Florida Constitution, Article III, section 6. See *City of Weston, Florida v. The Honorable Charlie Crist, et. al.*, 2009-CA-2639 (Fla. 1st Circuit 2010). The legislation was passed again in 2011. Ch. 2011-15, Laws of Florida.
[15] Section 196.198, F.S.

property that is not directly owned by the educational institution, as long as the property is used exclusively for educational purposes and is owned by the identical owners of the educational institution. A recent Attorney General's opinion concluded that this exemption does not apply when both the property and the educational institution are in separate corporations and those corporations are owned by the identical people.

Proposed change: The bill extends the educational institution exemption to include situations when the property and the educational institution are owned by separate corporations and those corporations are owned by the identical people.

Section 10 - Change of Boundary of St. Lucie County and Martin County; School Taxes

Present situation: In 2012, the boundary line between St. Lucie and Martin counties was adjusted, transferring the subdivision of Beau Rivage from St. Lucie County to Martin County.[16] The legislation requires Martin County to determine how much tax and assessment revenue the transferred property would have generated for St. Lucie County taxing authorities in Fiscal Year 2013-2014 and requires Martin County to pay St. Lucie County a percentage of that amount for several years.[17] The first payment is 90 percent of the total and is required in Fiscal Year 2013-2014. Thereafter, the payments are reduced by an additional 10 percent per year. The last payment is required in Fiscal Year 2022-2023.

Any loss in the ability of St. Lucie County to generate its required local effort school funding because of the transfer of the subdivision to Martin County will be made up in the Florida Education Finance Program through the state portion of the total required per student funding.

Proposed change: The proposed bill amends ch. 2012-45, Laws of Florida, to exclude taxes levied by school districts from the calculation of the tax payment that Martin County must make to St. Lucie County.

Section 11 provides that the act takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Legislature may not enact, amend, or repeal a general law if the anticipated effect of doing so would be to reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989, except by a two-thirds vote of the membership of each chamber.[18] However, laws that have an "insignificant fiscal impact," which for Fiscal Year 2012-2013 is $1.9 million, do not need a two-thirds vote.[19]

[16] See Ch. 2012-45, Laws of Florida. The law was required because, although the subdivision was located in St. Lucie County, the geography of the area required all government services to traverse Martin County. For instance, due to the vicinity of Martin County schools, the students in the subdivision had attended Martin County schools for many years prior to the boundary shift.
[17] The apparent intent is to slowly transition the tax revenue between the counties.
[18] Fla. Const. Art. VII, s. 18(b)
[19] Fla. Const. Art. VII, s. 18(d)

The REC has not completed its review of the provisions of this bill that exempt certain commonly-owned property used for educational purposes. Staff estimates that these changes will reduce local government property tax revenue by an insignificant amount (less than $50,000). Furthermore, in total, the bill will increase local property tax revenue. Thus, a two-thirds vote is not required.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The REC estimates that the provisions of this bill that repeal the ability of limited liability partnerships to qualify for the affordable housing property tax exemption will increase local property tax revenue by $23.4 million in Fiscal Year 2013-2014. By Fiscal Year 2017-2018, the full recurring impact is estimated to be $140.9 million

The REC has not completed its review of the provisions of this bill that exempt certain commonly-owned property used for educational purposes. Staff estimates that these changes will reduce local government property tax revenue by an insignificant amount (less than $50,000).

B. Private Sector Impact:

The proposed bill creates certainty for taxpayers who use commercial mail delivery services. It provides more access to information for taxpayers by requiring notices of the certification of tax rolls to be on the property appraisers' websites. The proposed bill also provides a tax reduction for long-term lessees in certain situations and provides taxpayers additional time for appealing certain value adjustment board decisions. The proposed bill lessens taxpayer filing requirements by allowing counties to waive annual exemption filing requirements. Additionally, the proposed bill will increase taxes for some limited liability partnerships that have taken advantage of a recently-enacted exemption.

C. Government Sector Impact:

The proposed bill authorizes property appraisers and value adjustment boards to send certain notices electronically, thereby lowering postage expenses; will increase local government property tax revenue by limiting the exemption for affordable housing property; and will lower the amount of taxes that Martin County must pay St. Lucie County, with respect to the boundary change enacted in 2012.

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.