

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	SB 1830	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Appropriations	115 Y's	1 N's
COMPANION BILLS:	CS/CS/HB 247, CS/CS/HB 437, HB 921, CS/HB 7159, SB 740, CS/CS/SB 928, CS/CS/SB 1352 and SB 1838	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

The bill contains several changes to statutes related to ad valorem taxation. The bill:

- Clarifies that a commercial mail delivery service postmark qualifies for the filing of certain applications and returns by taxpayers;
- Authorizes the use of electronic mail by property appraisers and value adjustment boards for certain documents with taxpayer consent;
- Requires notices related to tax roll certification to be provided on property appraiser websites;
- Provides long-term lessees the ability to retain their homestead exemption and related assessment limitations and exemptions in certain instances;
- Inserts the term "algaculture" in the definition of "agricultural purposes." Inserts the term "aquacultural crops" in the provision specifying the valuation of certain annual agricultural crops, nonbearing fruit trees and nursery stock;
- Allows for an automatic renewal for assessment reductions related to certain additions to homestead properties if used as living quarters for a parent or grandparent, and aligns related appeal and penalty provisions to those for homestead exemptions;
- Deletes a statutory requirement that the owner of a property must reside upon the property to qualify for a homestead exemption, consistent with a recent Florida Supreme Court decision;
- Clarifies the property tax exemptions counties and cities may provide for certain low income persons 65 and older;
- Removes a residency requirement that a senior disabled veteran must have been a Florida resident at the time they entered the service to qualify for certain property tax exemptions, which is consistent with a constitutional amendment to remove this residency requirement approved in November 2012;
- Repeals the ability for certain limited liability partnerships to qualify for the affordable housing property tax exemption;
- Exempts property used exclusively for educational purposes when the entities that own the property and the educational facility are owned by the same natural persons; and
- Removes school taxes from the taxes required to be transferred from Martin County to St. Lucie under a 2012 law that amended the boundaries of St. Lucie and Martin Counties.

The Revenue Estimating Conference has estimated impacts of three provisions in the bill that are expected to have a revenue impact on local government. The provision relating to property used for educational purposes would have a recurring negative impact of -\$0.1 million beginning in FY 2014-15. The provision relating to affordable housing would have a positive impact in FY 2013-14 of \$23.4 million (\$117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

The bill was approved by the Governor on May 30, 2013, ch. 2013-72, L.O.F., and except for the effective date section, which became effective upon that date and except as otherwise expressly provided, the bill takes effect July 1, 2013.

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

STORAGE NAME: s1830z1.FTSC

DATE: July 30, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The bill contains several changes to statutes related to ad valorem taxation.

Filing Dates for Returns and Applications

Current 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 bill allows 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.

Electronic Notices Related to Property Taxes

Current 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 must mail board decisions to property appraisers and petitioners.

Proposed Change

The 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 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. The form used to obtain the recipient's consent must contain a disclaimer that informs the taxpayer that email addresses are public records and, as such, are subject to disclosure pursuant to a public records request. 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 five years.

Publication of Notice Concerning Certified Assessment Rolls

Current 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.¹

Proposed Change

The 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.

¹ Section 193.122(2), F.S.

Ad Valorem Tax – Homestead Exemption and Assessment Limitations

Current Situation

Florida provides ad valorem tax exemptions and assessment limitations for homestead property.² Both property owners and long-term lessees³ 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.⁴ 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.

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.⁵ 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.⁶ Property owners can appeal the value adjustment board decision to circuit court, but must do so within 15 days following the value adjustment board decision.⁷

Proposed Change

For long-term lessees that qualify for homestead tax exemptions and limitations, the 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. This makes explicit in statute current practice by property tax administrators.

The 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.⁸

Algaculture; Aquacultural crops

Current Situation

Section 193.451(1), F.S., provides that “[g]rowing annual agricultural crops, nonbearing fruit trees, and nursery stock, regardless of the growing methods, shall be considered as having no ascertainable value and shall not be taxable until they have reached maturity or a stage of marketability and have passed from the hands of the producer and/or offered for sale.”

For the purpose of classifying for assessment purposes all lands within a county as either agricultural or nonagricultural,⁹ s. 193.461(5), F.S., defines “agricultural purposes” to “includ[e], but [not be] limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.”

² See generally Fla. Const. Art. VII, ss. 4 and 6.

³ 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.

⁴ Section 193.155(3)(a), F.S.

⁵ See Fla. Const. Art. VII, s. 4(d)(8).

⁶ Section 193.155(8)(1), F.S.

⁷ *Id.*

⁸ See s. 194.171(2), F.S.

⁹ Required by s. 193.461(1), F.S.

Proposed Changes

The bill inserts the term “aquacultural crops” in s. 193.451(1), F.S., specifying the valuation of certain annual agricultural crops, nonbearing fruit trees and nursery stock. The bill also inserts the term “algaculture” in the definition of “agricultural purposes” under s. 193.461(5), F.S.

Homestead Exemption; Living Quarters for Parents and Grandparents; Application

Current 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).¹⁰ The authority for the granny flats reduction is in ch. 193, F.S.; thus, counties cannot use their current authority to waive the annual application requirement and 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 five years.

Proposed Change

The bill amends the granny flats reduction to allow counties to waive the annual application requirement. Additionally, the bill requires property owners to notify the property appraiser when the property owner no longer qualifies for the reduction. The bill removes the civil penalty and five 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 bill imposes strict liability on a property owner who receives a reduction in assessed value under these provisions if the property owner was not entitled to such a reduction. The only affirmative defense provided is if the reduction was caused by a clerical mistake or omission by the property appraiser.

These penalties are the same as those for improperly claimed homestead exemptions. 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.

Homestead Exemption; Dependents Residing on the Property

Current Situation

*Garcia v. Andonie*¹¹ is a property tax case involving the right to a homestead exemption when the owner of the property does not reside on the property, but the owner’s dependent maintained permanent residence upon the property. Section 196.031(1)(a), F.S., provides in pertinent part that:

Every person who, on January 1, has the legal title or beneficial title in equity 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 ... as defined in s. 6, Art. VII of the State Constitution [homestead exemption]. (emphasis supplied)

Article VII, s. 6(a) of the Florida Constitution does not include the language requiring the owner to reside upon the property to qualify for the homestead exemption; however, the pre-1968 version of the Florida Constitution did contain the residency requirement.

¹⁰ See s. 193.703, F.S.

¹¹ 101 So.3d 339 (Fla. 2012)

In *Andonie*, the Florida Supreme Court found the residency requirement to be unconstitutional.

Proposed Change

The bill deletes the statutory requirement that the owner of a property must reside on it to qualify for a homestead exemption.

Amendment 2 Approved by the Voters in November 2012; Disabled Veterans

Current Situation

In November 2012, the voters approved a constitutional amendment regarding a property tax exemption for certain disabled veterans. Prior to the amendment, Florida provided a property tax exemption for disabled veterans' homestead property if the veteran was 65 or older, permanently disabled with a combat related disability, and was a resident of Florida at the time of entering United States military service.

Amendment 2 removed the requirement that the veteran be a resident of Florida at the time of entering military service.

Proposed Change

The bill amends ss. 196.082(1) and (3), F.S., to conform to the changes made by amendment 2, which was approved by the voters.

Additional Homestead Exemption – Person Age 65 or Older – Amendment 11 Approved by the Voters in November 2012

Current Situation

Since 1999, cities and counties have been authorized to offer an additional homestead exemption of up to \$50,000 to certain low income seniors.¹²

In November 2012, the voters approved a constitutional amendment that authorized the Legislature to allow cities and counties to grant an additional homestead exemption for persons 65 years of age or older.¹³ Amendment 11 allows an exemption equal to the assessed value of homestead property when the just value is less than \$250,000. The owner is still required to be 65 years of age or older and maintain a permanent residence on the property; however, the owner must have maintained a permanent residence thereon for a minimum of 25 years. The same income limitations apply to both exemptions.

In 2012, the Legislature passed a bill that would automatically implement amendment 11 upon voter approval,¹⁴ however, a drafting oversight eliminated the “up to” language for the existing exemption. As such, the current statute would now allow cities and counties to offer an additional exemption to certain low income seniors of \$50,000 only. This oversight was inadvertent.

Proposed Change

The bill amends s. 196.075(2)(a), F.S., to reinsert the “up to” language to correct the 2012 drafting error.

¹² See Art. VII, sec. 6(d)(1) of the Florida Constitution and s. 196.075, F.S.

¹³ 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).

¹⁴ Chapter 2012-57, L.O.F.

Ad Valorem Tax Exemption – Affordable Housing Property

Current Situation

Since 1999, Florida has provided an ad valorem tax exemption for affordable housing property when the property is wholly-owned by a non-profit corporation that qualifies as a charitable 501(c)(3) organization and meets certain other statutory requirements. In 2009,¹⁵ the statute was amended to 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 bill amends the affordable housing property exemption to remove the authority of a limited liability partnership that has a non-profit general partner that is a charitable 501(c)(3) organization to qualify for the exemption.

Ad Valorem Tax Exemption – Educational Property

Current Situation

An educational institution and its property are exempt from ad valorem tax in Florida.¹⁶ Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts 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 opinion¹⁷ 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 legal entities and those legal entities are owned by identical people.

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

Current 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.¹⁸ 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 2013-14 and requires Martin County to pay St. Lucie County a percentage of that amount for several years.¹⁹ The first payment is 90 percent of the total and is required in Fiscal Year 2013-14. Thereafter, the payments are reduced by an additional 10 percent per year. The last payment is required in Fiscal Year 2022-23.

¹⁵ 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.

¹⁶ Section 196.198, F.S.

¹⁷ Op. Att'y Gen. Fla. 2012-15 (2012)

¹⁸ *See* Ch. 2012-45, L.O.F. 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.

¹⁹ The apparent intent is to slowly transition the tax revenue between the counties.

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 bill amends ch. 2012-45, L.O.F., to exclude taxes levied by school districts from the calculation of the payment that Martin County must make to St. Lucie County.

Effective Date

This bill was approved by the Governor on May 30, 2013 ch. 2013-72 L.O.F. and will be effective July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated impacts of three provisions in the bill expected to have a revenue impact on local governments. The provision relating to property used for educational purposes would have a recurring negative impact of -\$0.1 million beginning in FY 2014-15. The provision relating to affordable housing would have a positive impact in FY 2013-14 of \$23.4 million (\$117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

2. Expenditures:

There may be an undetermined fiscal impact on property appraisers who are required to publish on their websites notice and the date of extension and certification of tax rolls.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.