

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 695 Ad Valorem Taxation

SPONSOR(S): Appropriations Committee, Finance & Tax Committee, Avila, Cortes, B. and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	10 Y, 6 N, As CS	Dugan	Langston
2) Appropriations Committee	18 Y, 9 N, As CS	Hawkins	Leznoff

SUMMARY ANALYSIS

Currently, property tax payers can contest their property assessments to the value adjustment board (VAB). The committee substitute revises the composition, procedures, and oversight of the VAB process. Specifically, the committee substitute:

- Requires that a petition to the VAB must be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation.
- Revises provisions related to the exchange of evidence.
- Provides clarification on the confidentiality of information in the evidence exchange process.
- Requires the VAB submit the certified assessment roll to the property appraiser by June 1 annually, unless the petitions in that county increased by more than 10 percent from the prior year.
- Restricts the qualifications of those who can represent the taxpayer before the VAB.
- Changes composition of the VAB from county commissioners, school board members, and citizen members to all citizen residents of the county appointed by their legislative delegation.
- Specifies that in the appointment/scheduling of special magistrates no consideration is to be given to assessment reductions recommended by any special magistrate.
- Authorizes the school board and county commission to audit the expenses related to the VAB.
- Elaborates on what is required in the VAB's findings of fact and conclusions of law.

Interest rates for disputed property taxes at the VAB are changed from 12 percent to the prime rate; also, the committee substitute proposes to allow property owners to accrue interest at the prime rate when the property appraiser and the property owner reach a settlement prior to the VAB hearing.

The definition of "common element" is expanded to include property located in the same county as a subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

The committee substitute authorizes the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls; contractors are paid from penalties. Also, the committee substitute provides that a tax lien based on a false homestead claim is collected in the same manner as, and in addition to, the current ad valorem taxes.

The committee substitute requires the notice of proposed property tax (TRIM notice) to contain a breakout of millage attributable to each of the county constitutional officers, and notify the property owner that he or she may challenge the assessed value of his or her property.

The Revenue Estimating Conference evaluated the impacts of some of the provisions of the committee substitute and identified several local government revenue impacts. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

This committee substitute may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Property Taxes in Florida

Current Situation

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴

After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵ Citizens may appeal their assessed value informally to the property appraiser, or to the county VAB or circuit court.

The Ad Valorem Process

Each property appraiser must submit an assessment roll to the Department of Revenue (DOR) by July 1 of the assessment year to determine if the rolls meet all the appropriate requirements of law relating to form and just value. Assessment rolls include, in addition to taxable value, other information on the property located within the property appraiser's jurisdiction, such as just value, assessed value, and the amount of each exemption or discount.⁶ The ad valorem process involves several steps that generally follow the below progression:

Step 1

In addition to sending the assessment roll to the DOR, each property appraiser must certify to its taxing authorities the taxable value of all property within its jurisdiction no later than July 1 of the assessment year, unless extended for good cause by the DOR.⁷

Step 2

The taxing authority uses the taxable value provided by the property appraiser to prepare a proposed millage rate (i.e., tax rate) that is levied on the property's taxable value.⁸ Within 35 days of certification of the taxable value by the property appraiser (typically by August 4 of the assessment year), the taxing authority must advise the property appraiser of its proposed millage rates.⁹

Step 3

¹ FLA. CONST. art. VII, s. 1(a).

² Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ FLA. CONST. art. VII, s. 4.

⁴ FLA. CONST. art. VII, ss. 3, 4, and 6.

⁵ s. 196.031, F.S.

⁶ s. 193.114, F.S.

⁷ s. 193.023(1), F.S.

⁸ s. 200.065(2)(a)1., F.S.

⁹ s. 200.065(2)(b), F.S.

The property appraiser uses the proposed millage rates provided by the taxing authorities to prepare the notice of proposed property taxes, commonly referred to as the Truth in Millage (TRIM) notice.¹⁰ Generally, the TRIM notice must be mailed no later than 55 days after certification of taxable value by the property appraiser (typically by August 24 of the assessment year).¹¹

Step 4

Any property owner who disagrees with the assessment in the TRIM notice or who was denied an exemption or property classification may:

- request an informal meeting with the property appraiser;¹²
- appeal to the county VAB;¹³ or
- challenge the assessment in circuit court.¹⁴

A petition to the VAB may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of the TRIM notice (typically by September 18 of the assessment year).¹⁵ With respect to an issue involving the denial of an exemption, a property classification application, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the TRIM notice (typically September 23 of the assessment year).¹⁶

Step 5

VAB hearings must begin between 30 and 60 days after the mailing of the TRIM notice (typically between September 23 and October 8 of the assessment year).¹⁷ The VAB must remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.¹⁸ Current law does not establish a date when the VAB hearings must be concluded. As of February 26, 2015, 35 counties had completed their VAB appeals for 2014 and reported that information to the DOR.¹⁹ Miami-Dade and Broward Counties are in the process of completing their 2013 VAB proceedings.

Step 6

After all VAB hearings are held, the VAB-adjusted assessment roll is submitted by the VAB to the property appraiser²⁰ and to the DOR.²¹ After making any adjustments to the assessment rolls caused by the VAB hearings, the property appraiser will certify the tax roll to the tax collector (typically before November 1 of the assessment year or as soon thereafter as the certified tax roll is received by the tax collector).²²

Step 7

The tax collector will then send tax bills within 20 working days to all properties owing tax within his or her jurisdiction.²³ Property taxes are due once a year, and can be paid beginning November 1st of the assessment year.²⁴ Generally, taxes become delinquent if not paid in full as of April 1st of the year after assessment.²⁵ Delinquent taxes will accrue interest until paid,²⁶ and may accrue penalties in certain circumstances.²⁷

¹⁰ s. 200.069, F.S.

¹¹ See s. 200.065(2)(b), F.S.

¹² s. 194.011(2), F.S.

¹³ s. 194.011(3), F.S.

¹⁴ s. 194.171, F.S.

¹⁵ s. 194.011(3)(d), F.S.

¹⁶ s. 194.011(3)(d), F.S.

¹⁷ s. 194.032(1)(a), F.S.

¹⁸ s. 194.032(3), F.S.

¹⁹ For spreadsheets containing the VAB petition summaries as reported to the DOR, see FLORIDA DEPARTMENT OF REVENUE, PROPERTY TAX DATA PORTAL: VAB SUMMARY available at <http://dor.myflorida.com/dor/property/resources/data.html> (last visited on March 20, 2015).

²⁰ s. 193.122(2), F.S.

²¹ s. 193.122(1), F.S.

²² s. 193.122(2), F.S.

²³ s. 197.322(2), (3), F.S.

²⁴ s. 197.333, F.S.

²⁵ s. 197.333, F.S.

The following chart summarizes key dates in this process:

“Typical Deadline” ²⁸	Actor	Action
Jan. 1, 2013	Property Appraiser	Property value is determined as of this date (“assessment date”)
July 1, 2013	Property Appraiser	Submit assessment roll to DOR
July 1, 2013	Property Appraiser	Certify taxable value to Tax Collector
Aug. 4, 2013	Tax Collector	Submit proposed millage rates to Property Appraiser
Aug. 24, 2013	Property Appraiser	Mail TRIM notice to Property Owners
Sept. 23, 2013	Property Owner	File petition to VAB
Oct. 8, 2013	VAB	Begin VAB hearings
Nov. 1, 2013	VAB	Submit adjusted assessment roll to Property Appraiser
Nov. 28, 2013	Tax Collector	Mail tax bill to Property Owners
March 31, 2014	Property Owner	Pay tax bill

School District Funding

Florida school districts are funded by support at the federal, state, and local government level. Federal funds are typically used to supplement state and local funds authorized by the Florida Legislature to support various education programs. Funds for state support to school districts are provided primarily by legislative appropriations. The major portion of state support is distributed through the Florida Education Finance Program (FEFP). The FEFP is the primary mechanism for funding the operating costs of Florida school districts. Local revenue for school support is derived almost entirely from property taxes levied by Florida’s 67 counties. Each school district participating in the state allocation of funds for the operation of schools must levy a millage representing its required local effort (RLE) from property taxes.

Each school district’s RLE is determined by a statutory procedure that is initiated by certification of the most recent estimated property tax values²⁹ of each district by the DOR to the Commissioner of Education (Commissioner) no later than two working days prior to July 19 of the assessment year.³⁰ No later than July 19 of the assessment year, the Commissioner uses the estimated property tax values to calculate the RLE millage rate that would generate enough property taxes to cover the RLE for that year.³¹ For example, the estimated 2013-2014 school taxable value was certified by the DOR to the Commissioner in July 2013.

If a district fails to collect the full amount of its RLE in a prior year because of changes in property values,³² the Commissioner is authorized to calculate an additional millage rate necessary to generate the amount of uncollected funds.³³ The additional millage rate is referred to as the prior period funding adjustment millage (PPFAM). The PPFAM is typically calculated in July of the year following the assessment. Continuing the above example, the recalculated 2013-2014 school taxable value (after any changes) is typically certified by the DOR to the Commissioner in July 2014.

Changes in property values may occur as a result of litigation or VAB petitions attacking the assessed value or inclusion of certain property on the assessment roll.³⁴ However, until the final adjudication of any litigation or VAB petitions, the assessed value of the contested property is excluded from the

²⁶ s. 197.152, F.S.

²⁷ See s. 196.161, F.S.

²⁸ The chart is provided for illustrative purposes. The deadline refers to the date the actor typically must take action; however, the deadline may be changed by other circumstances not identified in the chart.

²⁹ The ad valorem tax process involves numerous steps, and the value of property may change depending on the outcome of informal appeals to the property appraiser, VAB determinations, or circuit court decisions.

³⁰ s. 1011.62(4)(a)1.a., F.S.

³¹ s. 1011.62(4)(a)1.a., F.S.

³² s. 1011.62(4)(c), F.S.

³³ s. 1011.62(4)(e), F.S.

³⁴ s. 1011.62(4)(c)1., F.S.

computation of a school district's RLE.³⁵ If final adjudication does not occur prior to the PPFAM calculation in July of the year after assessment, the school district cannot collect the unrealized school funds.

In 2014, the Legislature passed a temporary solution for school districts where the local VAB process delays completion of the certification of the final tax roll for longer than one year.³⁶ For the 2014-15 fiscal year only, such districts can "speed-up" the levy of 2014 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined.³⁷

Proposed Changes

The committee substitute amends s. 193.122(1), F.S., to require the VAB to complete the certification and submit each final assessment roll to the property appraiser by June 1 following the tax roll year. The June 1 deadline is applicable beginning with the 2017 tax rolls, and is waived in any county where the VAB petitions increase by more than 10 percent from the prior year.

Value Adjustment Board Process

Current Situation

Chapter 194, F.S., provides for administrative and judicial review of ad valorem tax assessments. Each county in Florida has a VAB composed of five members³⁸ that hears petitions pertaining to property assessments made by the county property appraiser.³⁹ The VAB hears evidence from both the petitioner and property appraiser as to whether a property is appraised at its fair market value, as well as issues related to tax exemptions, deferments, and portability.⁴⁰

The property owner may initiate a review by filing a petition with the clerk of the VAB.⁴¹ A petitioner before the VAB may be represented by an attorney or agent.⁴² The DOR rules state, "The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the VAB."⁴³ Generally, a petitioner before the VAB must pay all of the non-ad valorem assessments and make a partial payment of the ad valorem taxes before the taxes become delinquent.⁴⁴

The clerk of the VAB⁴⁵ is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the VAB. The petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least five calendar days before the day of the originally scheduled hearing.⁴⁶ VAB petition forms may be found at the DOR website, the County Property Appraiser's office, and in most counties at the office or website of the VAB Clerk.⁴⁷ There is no statutory requirement that the

³⁵ s. 1011.62(4)(c)2., (d), F.S.

³⁶ Ch. 2014-53, Laws of Fla.

³⁷ s. 1011.62(4)(e)1.c., F.S.

³⁸ s. 194.015, F.S.

³⁹ s. 194.011, F.S. The VAB also hears complaints about homestead exemptions and appeals exemption, deferral, or classification decisions. s. 194.032(1)(a), F.S.

⁴⁰ Additionally, VABs appoint special magistrates, who are qualified real estate appraisers, personal property appraisers or attorneys, to act as impartial agents in conducting hearings and making recommendations on all petitions. s.

194.035(1), F.S.

⁴¹ s. 194.011(3)(b), F.S.

⁴² s. 194.034(1)(a), F.S.

⁴³ Rule 12D-9.018(3), F.A.C.

⁴⁴ s. 194.014(1), F.S.

⁴⁵ The county clerk usually serves as the clerk of the VAB. s. 194.015, F.S.

⁴⁶ s. 194.032(2)(a), F.S.

⁴⁷ s. 194.011(3)(a), F.S.

petitioner sign the VAB petition. However, the DOR rules state, "A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer."⁴⁸

A petitioner is required to provide the property appraiser with a list of evidence, copies of documentation, and summaries of testimony at least 15 days prior to the hearing.⁴⁹ If the petitioner provides this information, and sends the appraiser a written request for responsive information, the appraiser must provide a list of evidence and copies of documentation to be presented at the hearing, including the "property record card"⁵⁰ but only if the petitioner checks the appropriate box on the form.⁵¹ The property appraiser is not required to provide a copy of the property record card if it is available online. The property record card is a record of assessment information maintained by the property appraiser for assessed properties in his or her jurisdiction. Currently, information submitted to the VAB as evidence generally becomes public record and is subject to Florida's public records laws.⁵²

Proposed Changes

The committee substitute amends s. 194.011, F.S., to require that a petition to the VAB must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization for representation by a person specified in s. 194.034(1)(a), F.S. A written authorization is valid for one tax year, and a new written authorization by the taxpayer shall be required for each subsequent tax year.

The committee substitute modifies the procedures for the exchange of evidence. When the property appraiser responds to the petitioner's request for evidence, the property appraiser must include the petitioner's property record card and the property record cards for any comparable property listed as evidence, except those cards that are available online (with confidential information redacted).

Under the committee substitute, provisions related to evidence exchange only apply to VAB proceedings after the petitioner has served notice of intention to challenge the property appraiser's assessment of value or classification of property pursuant to s. 194.011, F.S. Evidence that is confidential under current law shall remain confidential until it is submitted to the VAB for consideration and admission into the record.

The committee substitute requires the VAB to hear all petitions, complaints, appeals, and disputes and submit the certified assessment roll as to the property appraiser by June 1 annually. The June 1 deadline is waived in any county where the VAB petitions increase by more than 10 percent from the prior year.

The committee substitute restricts the persons who can represent the taxpayer to:

- a corporate representative of the taxpayer,
- an attorney who is a member of The Florida Bar,
- a person with power of attorney,
- a licensed real estate appraiser,
- a licensed real estate broker, or
- a certified public accountant.

Value Adjustment Board Members and Special Magistrates

Current Situation

⁴⁸ Rule 12D-9.018(4), F.A.C.

⁴⁹ s. 194.011(4)(a), F.S.

⁵⁰ s. 194.011(4)(b), F.S.

⁵¹ s. 194.032(2)(a), F.S.

⁵² Informal, Fla. Op. Att'y Gen. (April 30, 2010) *available at*

<http://www.myfloridalegal.com/ago.nsf/Opinions/946D6B5DA86200268525771B00485776>; FLORIDA DEPARTMENT OF REVENUE PROPERTY TAX INFORMATIONAL BULLETIN, PTO 10-07 – VALUE ADJUSTMENT BOARD HEARINGS AND CONFIDENTIALITY (May 27, 2010).

In 1895, the Legislature provided exclusive responsibility for hearing taxpayer appeals from assessments in the county commissions.⁵³ In 1969, the Legislature changed the membership to include school board members.⁵⁴ In 2008, the Legislature again changed the membership to include two citizen members.⁵⁵ Currently, the VAB membership must consist of two members of the governing body of the county as elected from the membership of the board of said governing body (one of whom shall be elected chairperson), one member of the school board as elected from the membership of the school board, and two citizen members.⁵⁶

A quorum of three members of the board must include at least:

- One member of the governing body of the county.
- One member of the school board.
- One citizen member.

In addition, current law requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings.⁵⁷ Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.⁵⁸ Special magistrates must meet the following qualifications:

- A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than five years' experience in the area of ad valorem taxation.
- A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than five years' experience in real property valuation.
- A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than five years' experience in tangible personal property valuation.

Proposed Changes

The committee substitute provides for five citizen members of the board appointed by the county's local legislative delegation. The membership shall be comprised as follows:

- One member must be an owner of homestead property in the county.
- One member must own commercial property in the county.
- One member must be a licensed real estate appraiser who is a resident of the county (if no resident real estate appraiser available, the member can be a homestead or commercial property owner who is a resident).
- The remaining two members of the VAB must be residents of the county.

Any three members shall constitute a quorum of the board, and no meeting shall take place unless a quorum is present. One member shall serve as chairman of the board as elected by the five members. The Department of Business and Professional Regulation must provide continuing education credits to appraiser members of VABs. The committee substitute makes per diem payments for members of the board mandatory. The committee substitute further clarifies that counsel may not represent any property appraiser or any tax collector in any administrative or judicial review of property taxes.

The committee substitute specifies that in the appointment/scheduling of special magistrates no consideration is given to assessment reductions recommended by any special magistrate either in the current year or in any prior year.

Value Adjustment Board Expenditures

⁵³ Ch. 4322, Laws of Fla. (1895).

⁵⁴ Ch. 69-140, Laws of Fla.

⁵⁵ Ch. 2008-197, Laws of Fla.

⁵⁶ s. 194.015, F.S.

⁵⁷ s. 194.035, F.S.

⁵⁸ s. 194.011(5)(a)2., F.S.

Current Situation

Two-fifths of the expenses of the VAB shall be borne by the district school board and three-fifths by the district county commission. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.⁵⁹ Current law does not provide the district school board or county commission the authority to audit the expenses related to the VAB process.

Proposed Changes

The committee substitute authorizes the district school board and district county commission to audit the expenses related to the VAB process.

Determinations of VAB

Current Situation

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.⁶⁰ The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.⁶¹ If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the VAB. The clerk of the VAB, upon issuance of a decision, shall notify each taxpayer and the property appraiser of the decision of the VAB. If requested by the DOR, the clerk shall provide to the DOR a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037, F.S., in the manner and form requested.

In 2011, the Florida Legislature created s. 194.014, F.S., to require taxpayers challenging their assessments to pay at least 75 percent of the ad valorem taxes before those taxes become delinquent. If the VAB determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until the unpaid amount is paid.⁶² If the VAB determines that a refund is due, the overpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid.⁶³ Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice.

Similarly, taxpayers who file a petition in circuit court must pay the tax collector an amount not less than the amount of tax which the taxpayer admits in good faith to owe. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it enters a judgment against the taxpayer for the deficiency and for interest on the deficiency at a rate of 12 percent.⁶⁴

Proposed Changes

The committee substitute elaborates on what is required in the VAB's findings of fact and conclusions of law. Specifically:

- Findings of fact must be based on admitted evidence or a lack thereof.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.

⁵⁹ s. 194.035, F.S.

⁶⁰ s. 194.034(2), F.S.

⁶¹ s. 194.034(2), F.S.; *see also* rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

⁶² s. 194.014(2), F.S.

⁶³ s. 194.014(2), F.S.

⁶⁴ s. 194.192, F.S.

The committee substitute changes the amount of interest that accrues on disputed ad valorem taxes from 12 percent to the bank prime loan rate as determined by the Federal Reserve on July 1 or the first business day thereafter. Further, the committee substitute allows for interest accrual, at the prime rate, when the property appraiser and the property owner reach a settlement prior to the VAB hearing. Currently, the bank prime rate is published on a website titled "H.15 Selected Interest Rates" and is 3.25 percent.⁶⁵ The committee substitute does not change the interest rate for amounts in dispute for court proceedings.

Most petitioners in Miami-Dade County, which has the highest number of VAB petitions, pay the full amount of ad valorem taxes and earn interest at 12 percent annually on the overpaid amount if successful in the petition; the result is more interest is paid out to petitioners than the amount of interest brought in to the county on underpaid taxes.⁶⁶ The Revenue Estimating Conference determined the interest rate change for VAB determinations on disputed ad valorem taxes is expected to have a positive, recurring impact on local governments. The REC has not estimated the impact of allowing interest accrual when the property appraiser and the property owner reach a settlement prior to the VAB hearing.

Fraudulent Homestead Exemption Claims

Current Situation

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the County holds a tax certificate sale for real property located in the County on which the taxes became delinquent in that year.⁶⁷ A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes; however, it does not convey any property rights or ownership to the certificate holder.

The property owner has a period of two years from the date the taxes became delinquent to redeem the tax certificate by paying to the County the total due, including accrued interest.⁶⁸ After the two year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the County.⁶⁹ If tax deed auction proceedings begin, the property owner must pay all due and delinquent years, plus fees and interest to stop the sale of their property at public auction.⁷⁰ If the tax certificate is not redeemed or sold at auction after seven years, the tax certificate is cancelled and considered null and void.⁷¹

Current law provides that if a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.⁷² The property owner has 30 days to pay the taxes owed, plus penalties and interest.⁷³ If not paid within 30 days of notice, the property appraiser may file a tax lien;⁷⁴ however, it is unclear under current administration of this law whether the property appraiser must file the tax lien. Even if a tax lien is filed, current administration of the law does not follow the tax certificate process described above. Instead, the tax lien remains on the property until it is paid or expires after 20 years.⁷⁵

Proposed Changes

⁶⁵ FEDERAL RESERVE, H.15 SELECTED INTEREST RATES (March 9, 2015) *available at* <http://www.federalreserve.gov/releases/h15/current/> (last visited March 15, 2015).

⁶⁶ Discussion from Revenue Estimating Conference, Impact Conference, Value Adjustment Boards: HB 695 (March 13, 2015).

⁶⁷ s. 197.432, F.S.

⁶⁸ s. 197.502, F.S.

⁶⁹ s. 197.502, F.S.

⁷⁰ s. 197.472, F.S.

⁷¹ s. 197.482, F.S.

⁷² s. 196.161, F.S.

⁷³ s. 196.161, F.S.

⁷⁴ s. 196.161, F.S.

⁷⁵ s. 95.091(1)(b), F.S.

The committee substitute authorizes the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. Agreements for such contracted services must provide that:

- the contractor may not directly or indirectly contact the person claiming a homestead exemption;
- after the contractor completes the examination or audit, the property appraiser will make the determination whether the property owner is entitled to the homestead exemption;
- the contractor is solely responsible to the property appraiser for any claims arising from the contractor's performance; and
- the contractor's compensation will consist solely of a portion of the penalties collected on the assessments resulting from the examination or audit and the removal of exemptions from previous and current year tax rolls. A property appraiser contracting for such services is entitled the related interest assessed on previous and current year's assessment rolls. After distributing the compensation for such contracted services and the interest retained by the property appraiser, the tax collector shall distribute any back taxes collected under chapter 197.

The committee substitute clarifies that a tax lien based on a fraudulent homestead claim shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197 (including the sale of tax certificates). Further, the committee substitute provides that the unpaid taxes, interest, and penalties due from homestead fraud perpetrators will be added to the next tax assessment if not paid in accordance with s. 196.161, F.S.

TRIM Notice Format

Current Situation

Current law provides the specific elements and required content and format of the TRIM notice, including the information required to appear in columnar form and the information underneath each column heading.⁷⁶ The DOR prescribes the TRIM notice forms; however, a property appraiser may use a different form, provided that, among other things, it is substantively similar to the one prescribed by the DOR.⁷⁷ Although the TRIM notice provides information related to the millage rates and dollar amount of taxes levied,⁷⁸ it does not specify how the millage rate and amount of taxes are attributable to the budgets of each constitutional officer.⁷⁹

Proposed Changes

The committee substitute amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to the budgets of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections, respectively. The committee substitute further amends s. 200.065, F.S., to require the TRIM notice to contain subheading entries for the proportionate amount of gross ad valorem tax or millage attributable to the budget of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections. Additionally, the TRIM notice currently notifies the property owner that he or she may challenge the market value of his or her property; the committee substitute changes market value to assessed value.

Common Elements

Current Situation

⁷⁶ See s. 200.069, F.S.

⁷⁷ In addition, the property appraiser's office may use a substantially similar form if that office pays related expenses and obtains prior written permission from the DOR's executive director.

⁷⁸ This information was added to the required information by Ch. 2009-165, Laws of Fla.

⁷⁹ "Constitutional officers" means sheriff, property appraiser, clerk of court and county comptroller, tax collector, and supervisor of elections.

When a property appraiser assesses subdivisions, s. 193.0235, F.S., specifies that ad valorem taxes and non-ad valorem assessments are assessed against the lots within a platted residential subdivision and not upon the subdivision property as a whole. Pursuant to s. 193.0235, F.S., such assessments, including a tax or assessment imposed by a county, municipality, special district, or water management district, may not be assessed separately against common elements utilized exclusively for the benefit of lot owners within the subdivision, regardless of ownership. Property appraisers must prorate the value of the common elements and apply them to all of the lots in the subdivision.

For the purposes of s. 193.0235, F.S., the term “common element” includes:

- Subdivision property not included within lots constituting inventory for the developer which are intended to be conveyed or have been conveyed into private ownership.
- An easement through the subdivision property, which has been dedicated to the public or retained for the benefit of the subdivision.
- Any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a drainage pond, or detention or retention pond, for the exclusive benefit of the subdivision.

Proposed Changes

The committee substitute adds to the definition of “common element” in s. 193.0235, F.S., property located within the same county as a subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

Auditor General Report

In May of 2014, the Florida Auditor General issued a report on county VABs and the DOR’s oversight.⁸⁰ The report made the following findings (the committee substitute contains language relating to the findings in bold):

- **Independence in the appeal process at the local level may have been compromised due to local officials involved in the process who may not have been impartial and whose operations are funded with the same property tax revenue at stake in the appeal process.** Additionally, enhanced uniformity in the way VABs document compliance with appeal process requirements, and the establishment of general information on Florida’s property tax system for use Statewide by all VABs in complying with the DOR rule requiring the VABs to discuss general information on Florida’s property tax system and how taxpayers can participate,⁸¹ could promote fairness and consistency in the appeal process.
- Noncompliance with the DOR rules for one VAB that gave the appearance of bias and undue influence in the appeal process in at least one instance.
- Special magistrates served on multiple VABs during the same tax year, which appears to be inconsistent with the State Constitution dual office holding prohibition.⁸²
- **Selection of special magistrates may not have been based solely on experience and qualifications,** contrary to law and the DOR rules, and verification of such information was not always documented.
- Special magistrate training was not verified by the DOR prior to issuing statements acknowledging receipt of training, and one VAB did not document special magistrate training in its records.
- Verification of compliance with law and the DOR rules relating to VAB prehearing requirements was not always documented.
- VAB organizational meetings were not always held in accordance with the requirements prescribed by the DOR rules.
- Prescribed procedures for commencing VAB hearings were not always followed by the VABs, contrary to the DOR rules.

⁸⁰ STATE OF FLORIDA AUDITOR GENERAL, COUNTY VALUE ADJUSTMENT BOARDS AND DEPARTMENT OF REVENUE’S OVERSIGHT THEREOF: PERFORMANCE AUDIT (May 2014).

⁸¹ Rule 12D-9.013(1)(i), F.A.C.

⁸² See also 2012-17 Fla. Op. Att’y Gen. (May 17, 2012) (citing FLA. CONST. ART. II, s. 5(a)).

- Some VAB's records did not evidence consideration of the property appraiser's presumption of correctness issue, and one VAB did not consider this issue first at hearings, contrary to the DOR rules.
- **VAB written decisions were not always sufficiently detailed contrary to law and the DOR rules.**⁸³
- Public notice of VAB organizational meetings and hearings were not always in accordance with the DOR rules.
- VABs did not always allocate expenses between the board of county commissioners and the school board, contrary to law.
- VAB citizen members did not always meet the specific requirements provided in law and the DOR rules to serve on the VABs, and verification of such requirements was not always documented.
- **Documentation of taxpayer representation for a hearing was not evident for some petitions, contrary to the DOR rules.**

B. SECTION DIRECTORY:

Section 1 amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to county constitutional officers;

Section 2 amends s. 192.0105, F.S., to make conforming changes related to taxpayer representation before the VAB;

Section 3 amends s. 193.0235, F.S., to expand the definition of common element;

Section 4 amends s. 193.122(1), F.S., to require VABs to complete all hearings and certify assessment rolls to the property appraiser by June 1 following the tax year in which the assessments were made, unless the petitions in that county increased by more than 10 percent from the prior year;

Section 5 provides applicability for changes made to s. 193.122(1), F.S.;

Section 6 amends s. 194.011, F.S., to revise provisions related to VAB petitions and VAB evidence exchange procedures;

Section 7 amends s. 194.014, F.S., to change the interest rate for disputed property tax assessments from 12 percent to the bank prime loan rate established by the Federal Reserve;

Section 8 amends 194.015, F.S., to revise the composition of the VAB and authorize county and school board audits of the VAB; board members elect the chairman and can get continuing education credits for their service; provides applicability;

Section 9 amends s. 194.032, F.S., to revise provisions related to evidence exchange, rehearings, and the VABs timeframe for finishing hearings and certifying the assessment roll;

Section 10 amends s. 194.034, F.S., to restrict the persons who may represent a person before the VAB and to elaborate on what is required in the VAB's findings of fact and conclusions of law;

Section 11 amends s. 194.035, F.S., to specify that value reductions given by special magistrates cannot be considered in the hiring of special magistrates;

Section 12 amends s. 196.141, F.S., to allow the property appraiser to contract for services to examine or audit tax exemptions claimed on assessment rolls;

Section 13 amends s. 196.161, F.S., to authorize unpaid taxes, interest, and penalties due from homestead fraud perpetrators to be added to the next tax assessment;

⁸³ See rule 12D-9.030, F.A.C. (relating to recommended decisions) and rule 12D-9.032, F.A.C. (relating to final decisions).
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Section 14 amends s. 200.069, F.S., to require the TRIM notice to include county constitutional officers' budgets and notification that property owners may challenge the assessed value of their property; provides applicability;

Section 15 amends s. 213.30, F.S., to authorize the collection of money pursuant to s. 196.141, F.S.;

Section 16 provides a finding of important state interest;

Section 17 provides an effective date of July 1, 2015, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOR will update their rules relating to VABs to implement the provisions of the committee substitute.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference evaluated the impacts of some of the provisions included in the committee substitute:

- Sections 4 and 9, which require VABs to complete their hearings and certify the assessment roll by June 1, are expected to have a positive indeterminate impact to local government revenues in fiscal year 2016-2017 and a negative indeterminate impact to local government revenues in fiscal year 2017-2018 due to a speed-up in the process; the REC has not estimated the impact of waiving the June 1 deadline for counties where the VAB petitions increased by more than 10 percent from the prior year.
- Section 7 reduces the interest rates on ad valorem taxes contested in a VAB proceeding. This section is expected to have a positive, recurring impact on local governments of \$8.7 million in fiscal year 2015-2016, because, most petitioners in Miami-Dade County, which has the most VAB petitions, pay the full amount of ad valorem taxes and earn interest at 12 percent annually on the overpaid amount if successful in the petition; the result is more interest is paid out to petitioners than the amount of interest brought in to the county from interest paid on tax underpayments.⁸⁴ The REC has not estimated the impact of allowing interest accrual when the property appraiser and the property owner reach a settlement prior to the VAB hearing.
- Section 12, which authorizes entities that contract with the property appraiser to be paid from penalties, is estimated to have an indeterminate, recurring revenue impact of unknown magnitude and direction.

2. Expenditures:

The committee substitute requires local governments to take the following actions, which are likely to require expenditure of local funds:

- Sections 1 and 14 require local governments to break out the budgets of county constitutional officers in the budget summary and the TRIM notice.

⁸⁴ Discussion from Revenue Estimating Conference, Impact Conference, Value Adjustment Boards: HB 695 (March 13, 2015).

- Sections 4 and 9 require VABs to complete hearings and certify the tax roll to the property appraiser prior to June 1 of the year following the assessment, unless the petitions in that county increased by more than 10 percent from the prior year.
- Section 6 requires the property appraiser to provide more information as part of the evidence exchange.
- Section 8 authorizes VAB members to receive per diem expenses without requiring the school board and the board of county commissioners to allow such compensation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers that successfully dispute ad valorem assessments through a VAB hearing are expected to receive less revenue (interest paid on overpayments of disputed tax amounts) because of the interest rate change. Taxpayers may receive more revenue (interest paid on overpayments of disputed tax amounts) because this act allows for interest accrual when the property appraiser and the petitioner reach a settlement prior to the VAB hearing.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(a), of the Florida Constitution may apply because this committee substitute may require local governments to take action that requires the expenditure of money. If the committee substitute does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. The committee substitute does contain a statement of important state interest.

2. Other:

Section 8 of the committee substitute provides the local legislative delegation shall appoint the members of each VAB. It is unclear whether this is an infringement upon the powers assigned to another branch of government. Article II, section 3 of the Florida Constitution provides no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided otherwise. Generally, the power to make appointments is an executive function.

Section 3 of the committee substitute expands the definition of "common element" to include property located in the same county as a subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision. Thus, property located in a municipality may be taxed at a different rate than other property located in that municipality. It is unclear whether this violates the constitutional requirement of uniform taxation. Article VII, section 2 of the Florida Constitution provides all ad valorem taxation shall be at a uniform rate within each taxing unit, with limited exceptions for taxes on intangible personal property.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2015, the Appropriations Committee adopted a strike all amendment and five amendments to the strike all, and reported the bill favorable as a committee substitute to the committee substitute. The amendments made the following changes to the committee substitute:

- Added to the definition of “common element” in s. 193.0235, F.S., property located within the same county as a subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision;
- Waived the June 1 deadline to certify the assessment roll after all VAB hearings for any county where the VAB petitions increase by more than 10 percent from the prior year;
- Delayed the applicability of the June 1 deadline to begin with the 2017 tax rolls;
- Made drafting changes to clarify who can represent taxpayers before the VAB and to clarify the evidence exchange procedures;
- Provided the property appraiser is not required to provide comparable property records cards if they are available online from the property appraiser;
- Removed the proposed requirement that the property appraiser provide a copy of the form documenting value adjustments of the property pursuant to those factors described in s. 193.011(8), F.S.;
- Removed the proposed evidence exchange rule that failure by either party to timely comply with the evidence exchange provisions results in the exclusion from consideration by the VAB of any evidence that was requested in writing and not timely provided;
- Allowed interest accrual when the property appraiser and the property owner reach a settlement prior to a VAB hearing;
- Removed the proposed “good cause” restriction on petitioners rescheduling of a VAB hearing, and added the requirement that the clerk notify the petitioner of any rescheduled hearing 15 days before the rescheduled date (instead of usual 25 days);
- Provided that the chairman on the VAB will be elected by the members of the VAB;
- Removed the proposed requirement that written decisions of the VAB must include checklist forms, as prescribed by the DOR;
- Removed the proposed DOR authority to do a review of the VAB process in counties where 10,000 or more petitions are filed;
- Specified terms that must be included in a contract to perform an examine or audit of tax exemptions claimed on assessment rolls;
- Clarified the notification on TRIM notices that property owners may challenge the assessed value of their property.