

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: CS/CS/SB 972

INTRODUCER: Appropriations Committee; Finance and Tax Committee; and Senators Flores and Margolis

SUBJECT: Ad Valorem Taxation

DATE: April 20, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|-----------------------|-----------|------------------|
| 1. | <u>White</u> | <u>Yeatman</u> | <u>CA</u> | Favorable |
| 2. | <u>Babin</u> | <u>Diez-Arguelles</u> | <u>FT</u> | Fav/CS |
| 3. | <u>Babin</u> | <u>Kynoch</u> | <u>AP</u> | Fav/CS |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 972 makes several changes related to ad valorem taxes.

As to Value Adjustment Board (VAB) proceedings, the bill:

- Requires a petition to the VAB to be signed by the taxpayer, or be accompanied by the taxpayer's written authorization for representation, which is only valid for one tax year.
- Limits the persons who can represent taxpayers before the VAB to certain professionals, a corporate representative of the taxpayer, or an uncompensated individual with a power of attorney from the taxpayer.
- Requires the property appraiser to notify the petitioner when the property record card is available online.
- Authorizes a petitioner or the property appraiser to reschedule a hearing once, for good cause only.
- Reduces the notice for a rehearing from 25 days to 15 days when the rehearing is requested by the petitioner.
- Changes the rate of interest for overpayments and underpayments from 12 percent to the prime rate.
- Allows district school boards and district county commissions to audit VAB expenses.
- Requires all VAB petitions to be resolved by the June 1 following the assessment year. The June 1 date is extended to December 1 in any year that the number of petitions increases by more than 10 percent over the prior year.

In addition, the bill, for purposes of ad valorem taxation, defines a subdivision “common element” to include any property within the same county as the subdivision and used for the exclusive benefit of the lot owners of the subdivision for at least 10 years.

The Revenue Estimating Conference has estimated that the interest rate change will increase local government revenues by \$8.7 million in Fiscal Year 2015-2016.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Overview of the Ad Valorem Process

In Florida, ad valorem taxation is reserved to local governments.¹ The process for levying and providing administrative review of the ad valorem tax generally involves the property appraiser, tax collector, VAB, and local taxing authorities.

Property appraisers establish each property’s just value² as of January 1 of each year and apply applicable exemptions, classifications, or assessment limitations to determine the property’s taxable value. Local taxing authorities set a millage rate (i.e., tax rate) that is levied on the property’s taxable value. Each August, property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable values of the property and the tax that will be due based on the millage rates proposed by local governments.³

Property owners who disagree with the property appraiser’s assessment of the property or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;⁴
- Appeal to the county VAB;⁵ or
- Challenge the assessment in circuit court.⁶

Petitions to the VAB are due by mid-September and hearings begin in October. Taxes become payable on November 1. In many counties, the VAB cannot complete its hearings before November 1. In this situation, the Board of County Commissioners will instruct the tax collector to begin issuing tax notices based on the initial tax roll, but the board will also extend the roll for

¹ FLA. CONST. art. VII, s. 1(a) (stating that no state ad valorem taxes shall be levied upon real estate or tangible personal property).

² In arriving at just valuation, the county property appraiser takes into consideration the eight factors enumerated in s. 193.011, F.S. In 1965, the Supreme Court in *Walter v. Shuler* made the oft-quoted statement that just valuation is legally synonymous with market value and that it “may be established by the classic formula that it is the amount ‘a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.’” 176 So. 2d 81, 86 (Fla. 1965); see also *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Holly Ridge Ltd. Partnership v. Pritchett*, 936 So. 2d 694 (Fla. 5th DCA 2006).

³ Section 200.069, F.S.

⁴ Section 194.011(2), F.S.

⁵ Section 194.011(3), F.S.

⁶ Section 194.171, F.S.

completion of VAB proceedings. As part of extending the roll, the board will require the VAB to certify the portion of the roll that it has completed.⁷

Within 20 working days of receiving the certified tax roll, tax collectors send each taxpayer a tax notice.⁸ Property taxes generally are due November 1 and are delinquent on April 1 of the following year.⁹ Tax collectors collect all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county, and then distribute the taxes to each taxing authority.¹⁰

Taxpayers with unresolved petitions remaining before the VAB on April 1 must pay at least 75 percent of the initial ad valorem tax assessment by April 1.¹¹ Once the VAB has completed its review of all petitions – oftentimes months later – the VAB will issue its second, or “final,” certification of the VAB’s changes to the roll.¹² In a few large counties, the VAB can take in excess of one year to complete its review of all petitions and issue its final certification. Tax collectors will collect and distribute any additional taxes received as a result of final VAB decisions.

Value Adjustment Boards

Chapter 194, F.S., provides for administrative and judicial review of tax assessments. Each county in Florida has a VAB composed of five members¹³ that reviews appeals of the ad valorem tax decisions made by property appraisers.¹⁴ A property owner may petition the VAB to review the property appraiser’s assessment of real or tangible personal property or the denial of an exemption or classification.

Counties with a population greater than 75,000 are required to hire special magistrates to conduct valuation hearings. Before conducting hearings, the VAB must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.¹⁵

The VAB must appoint private counsel who has practiced law for over five years and who shall receive such compensation as may be established by the VAB.¹⁶ The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board may take place unless counsel to the board is present.

⁷ See ss. 193.122(1) and 197.323, F.S.

⁸ Section 197.322, F.S.

⁹ Section 197.333, F.S.

¹⁰ Section 197.383, F.S.

¹¹ Section 194.014, F.S.

¹² Section 193.122, F.S.

¹³ Section 194.015, F.S.

¹⁴ Section 194.011, F.S.

¹⁵ Section 194.011(5)(a)2., F.S.

¹⁶ Section 194.015, F.S.

Petition Process for VAB Hearing

A petitioner initiates a review of a property assessment by filing a petition in the VAB. Each petition may be subject to a filing fee, up to \$15.¹⁷ Generally, anyone may represent the property owner before a VAB. Value adjustment board petitions may be found at the DOR website,¹⁸ the County Property Appraiser's office, and in most counties at the office or website of the VAB Clerk. The clerk of the VAB¹⁹ 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.

When the VAB schedules a hearing, it is required to notify the petitioner at least 25 days before the date of the scheduled hearing.²⁰ Once a petitioner receives the notice of hearing, the petitioner is allowed to reschedule the hearing a single time by submitting a written request to reschedule at least 5 days before the hearing.²¹ If the hearing is rescheduled, the VAB is required to provide another 25-day notice.

Property Record Cards

Property appraisers maintain records of assessment information for assessed properties. An individual property's record of information is often referred to as the "property record card." A petitioner may elect to receive a copy of the property record card when the petitioner files a petition. If an election is made, the property appraiser is required to provide the property record card, unless the property record card is available online.²²

Interest

If a petition to the VAB is still pending when the taxes become delinquent on April 1, the petitioner is required to pay 75 percent of the ad valorem taxes due.²³ Overpayments and underpayments accrue interest at the rate of 12 percent per year.²⁴ 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. If the VAB determines that a refund is due, the overpaid amount similarly accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued.

¹⁷ Section 194.013, F.S.

¹⁸ See Rule 12D-9.015, F.A.C.; Dep't of Revenue, *Value Adjustment Board Forms and Calendar*, available at http://dor.myflorida.com/Pages/forms_index.aspx (last visited Apr.17, 2015) (See Form DR-486 under *Ad Valorem Tax (Property Tax)*).

¹⁹ The county clerk usually serves as the clerk of the VAB. Section 194.015, F.S.

²⁰ Section 194.032(2)(a), F.S.

²¹ *Id.*

²² Section 194.032(2)(a), F.S.; See Chapter 2013-109, s. 8, Laws of Fla. (SB 556).

²³ Section 194.014(1)(a), F.S.

²⁴ Section 194.014(2), F.S.

Department of Revenue Oversight

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.²⁵ Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.²⁶

Assessment rolls must be submitted to the DOR on or before July 1.²⁷ By definition, “complete submission of the rolls” includes, but is not limited to:

- Accurate tabular summaries of valuations as prescribed by DOR rule.
- An electronic copy of the real property assessment roll including for each parcel total value of improvements, land value, the recorded selling prices, other ownership transfer data required for an assessment roll, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by DOR rule.
- An accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by DOR rule.
- An electronic copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by DOR rule.
- An accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by DOR rule.²⁸

The DOR uses Form DR-493, promulgated through rule 12D-8.002(4), F.A.C., to track the adjustments made to fair market value.

Section 194.011, F.S., provides in part that the DOR is required to develop:

- Uniform procedures for hearings before the value adjustment board.
- A policies and procedures manual for value adjustment boards, special magistrates, and property owners to use in proceedings before the value adjustment board.

In addition, s. 194.035(3), F.S., provides that the DOR shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training emphasizes the DOR standard measures of value, including the guidelines for real and tangible personal property. A person who has three years of relevant experience and who has completed the training provided by the DOR may be appointed as a special magistrate. The training is open to the public.

²⁵ Section 195.002, F.S.

²⁶ Chapter 195, F.S.

²⁷ Section 193.1142, F.S.

²⁸ Section 192.001(18), F.S.

Recommendations Concerning the VAB Process

In a December 2010 report,²⁹ the Office of Program Policy Analysis and Government Accountability, found that counties and other participants in the VAB process were likely incurring increased costs, and the time county boards take to complete the process varies, but has increased in recent years due to factors such as:

- Growing numbers of petitions.
- Recent changes in state law and administrative rules.
- Involvement of property tax representatives.

The Office of Program Policy Analysis and Government Accountability recommended that “if the Legislature wishes to make additional changes to the VAB process, it could consider options to (1) shorten the process; (2) address costs and other fiscal implications; and (3) increase accountability.”

In its March 2015 internal audit report,³⁰ the Miami-Dade County Public Schools Office of Management and Compliance Audits makes 11 recommendations concerning the VAB process. The audit explains that delays to the final certification of the county’s tax roll negatively and significantly affect the school district’s ability to fund its operations. The Miami-Dade audit notes that the number of days between the first and last hearing date by the VAB was 802 days in tax year 2009, 535 days in tax year 2010, 492 days in tax year 2011, and 519 days in tax year 2012. Having such a lag in reporting the final tax roll to DOR restricts the school district’s revenue, and may affect its ability to receive full funding in the appropriations bill in the year appropriated by the Florida Legislature. The audit found:

- Inconsistencies between rules and statute, particularly as it pertains to DOR rules on rescheduling hearings.
- Lack of compliance with statutes and rules, such as petitions presented by unlicensed agents without signed or written authorization from the taxpayer.
- Internal control weakness, with one example being no limitation placed on the incentive to overpay and collect interest at 12 percent annual percentage rate.

Taxpayer Bill of Rights

The Florida Statutes set forth a general taxpayer bill of rights in s. 213.015, F.S., and a property tax specific taxpayer bill of rights in s. 192.0105, F.S. The Florida Taxpayer’s Bill of Rights for property taxes and assessments was created to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. These rights are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the DOR. Section 192.0105, F.S., sets forth the taxpayer rights along with cross references to where those rights are effectuated. The rights are categorized as follows: the right to know, the right to due process, the right to redress, and the right to confidentiality.

²⁹ The Florida Legislature Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

³⁰ Miami-Dade County Public Schools Office of Management and Compliance Audits, *Audit of the Miami-Dade County Value Adjustment Board (VAB) Appeals Process – Phase 1* (March 2015).

Subdivision Common Elements

All real property is subject to ad valorem tax unless exempted.³¹ Each parcel of real property is assessed separately on the tax roll.³² Counties and municipalities, as well as other taxing units, may levy a separate millage on the property within their jurisdictions.³³ Each taxing unit's millage must be uniformly applied to the all property within the unit.³⁴

Property that is or has been part of a platted subdivision and is designated on the plat or the approved site plan as a common element is not subject to the general requirement that all parcels of real property be assessed separately.³⁵ The value of property that is part of a platted subdivision and designated on the plat or approved site plan as a common element is required to be prorated and added to the value of each individual lot within the subdivision. The taxes that are imposed on the lot are applied to all of the value assigned to it.³⁶

Section 193.0235(2), F.S., defines "common element" to include:

- 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.³⁷

Frenchman's Creek subdivision, located in the City of Palm Beach Gardens, owns beachfront property (the beach club) in a neighboring municipality, the City of Juno Beach. Both municipalities are in Palm Beach County.

Beginning in 2003, the Palm Beach County Property Appraiser treated the beach club as property that is part of a platted subdivision and designated on the plat or approved site plan as a common element.³⁸ As such, the property appraiser prorated the value of the beach club located in the City of Juno Beach to the individual lot owners of the Frenchman's Creek subdivision located in the City of Palm Beach Gardens. Such treatment continued until 2014.

In 2014, the Palm Beach County Property Appraiser reconsidered the treatment of the beach club and concluded that the beach club was not property that is part of a platted subdivision and designated on the plat or site plan as a common element. Thus, the property appraiser transferred

³¹ FLA. CONST. art. VII, s. 4.

³² See s. 192.001(18), F.S. (defining "complete submission of the [tax] rolls" to require assessment information for "each parcel").

³³ There are provisions that protect property owners within a municipality from double taxation by the county. See FLA. CONST. art. VIII, s. 1(h).

³⁴ FLA. CONST. art. VII, s. 2.

³⁵ See generally s. 193.0235, F.S.

³⁶ *Id.*

³⁷ Section 193.0235(2), F.S.

³⁸ See Email from Gary Nikolits, Palm Beach County Property Appraiser, to staff of the Senate Committee on Finance and Tax (Apr. 15, 2015) (on file with the Senate Committee on Finance and Tax).

the value of the beach club back to the City of Juno Beach tax roll and taxes were assessed against the owner – Frenchman’s Creek, Inc. (the subdivision’s homeowner’s association).

III. Effect of Proposed Changes:

Sections 1 and 9 amend s. 194.034, F.S., to limit the persons that are authorized to represent petitioners before VABs to include: a corporate representative of the taxpayer, an attorney who is a member of the Florida bar, a real estate appraiser licensed under ch. 475, a real estate broker licensed under ch. 475, or a certified public accountant licensed under ch. 473, retained by the taxpayer, or an uncompensated individual with a power of attorney to act on behalf of the taxpayer. The bill makes conforming changes to s. 192.0105, F.S.

Section 2 amends s. 193.0235, F.S., to include as a subdivision “common element,” property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

Sections 3 and 4 amend s. 193.122, F.S., to provide that a VAB must complete its second certification of the assessment roll by June 1 following the year the tax roll is assessed. The deadline is extended to December 1 in any year that the number of petitions increases by more than 10 percent over the prior year. The change first applies to the 2017 tax roll.

Section 5 amends s. 194.011, F.S., to require that petitions be signed by the taxpayer or be accompanied by the taxpayer’s written authorization for representation. A new written authorization for representation is required each year.

Section 6 amends s. 194.014, F.S., to change the interest rate on overpayments and underpayments from 12 percent to the prime interest rate quoted by commercial banks to large businesses as published by the Board of Governors of the Federal Reserve System.

Section 7 amends s. 194.015, F.S., to allow district school boards and district county commissions to audit expenses related to the VAB process.

Section 8 amends s. 194.032, F.S., to:

- Require the property appraiser to notify a petitioner when property record cards are available online.
- Allow the property appraiser or the petitioner to reschedule a hearing once, only for good cause. “Good cause” is defined to mean circumstances beyond the control of the party seeking to reschedule that would reasonably prevent the party from being adequately represented at the hearing. If the petitioner requests the rescheduling, the petitioner is only entitled to a 15-day notice of the date of the rescheduled hearing.

Section 10 provides an effective date of July 1, 2015.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

Section 2 of the bill attempts to address the situation in Palm Beach County concerning the Frenchman's Creek subdivision and its beach club by requiring the property appraiser to revert to the 2003-2014 treatment of prorating the value of the beach club among the individual lots in the Frenchman's Creek subdivision. If the beach club property is treated like other property that is part of a platted subdivision and designated on the plat or approved site plan as a common element, the prorated value of property located within the City of Juno Beach will be subjected to the millage imposed within the City of Palm Beach Gardens.

Imposing the millage applicable to property in the City of Palm Beach Gardens to property physically located in the City of Juno Beach may implicate Article VII, section 2, of the Florida Constitution. This constitutional provision provides that all ad valorem taxation shall be at a uniform rate within each taxing unit (uniformity requirement).³⁹ Although there are reported court decisions concerning the uniformity requirement,⁴⁰ none appear to directly address an issue similar to that pursuant to section 2 of the bill.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has estimated that the interest rate change under CS/SB 972 will increase local government recurring revenues by \$8.7 million in Fiscal Year 2015-2016.

For Miami-Dade and Broward counties, staff estimates that section three of CS/CS/SB 972 will increase Fiscal Year 2017-2018 receipts by approximately \$50 million and reduce Fiscal Year 2018-2019 receipts by approximately \$50 million, assuming that the counties can meet the June 1 deadline required by that section of the bill. For other counties, the impact is indeterminate.

³⁹ See Fla. Const. art. VII, s. 2.

⁴⁰ See, e.g., *Gallant v. Stephens*, 358 So. 2d 536 (Fla. 1978); *W.J. Howey Co. v. Williams*, 142 Fla. 415 (1940); *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999).

B. Private Sector Impact:

By increasing accountability of the VAB process, the bill may make the VAB process more efficient and easier to navigate for petitioners and their authorized agents.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 192.0105, 193.0235, 193.122, 194.011, 194.014, 194.015, 194.032, and 194.034.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 16, 2015:

The committee substitute:

- Extends the June 1 VAB completion requirement until December 1 in years when petitions increase more than 10 percent.
- Provides a new definition of “common elements” to include property located in the same county and dedicated for the exclusive use of subdivision lot owners for longer than 10 years.
- Requires good cause for a property appraiser or petitioner to reschedule a hearing and defines “good cause.”
- Reduces the time period for a rehearing notice to 15 days when the rehearing is requested by the petitioner.
- Defines prime interest rate by reference to the Board of Governors of the Federal Reserve System rather than Florida Department of Revenue procedures.

CS by Finance and Tax on March 30, 2015:

The CS:

- Delays the new June 1 VAB completion requirement until the 2017 tax roll.
- Uses the prime rate of interest determined by the executive director of the Department of Revenue pursuant to s. 213.235, F.S., and deletes reference to the Wall Street Journal.

- Removes the DOR oversight of the VAB process and review of VABs that receive in excess of 10,000 petitions per year.
- Adds uncompensated individuals with powers of attorney to act on behalf of the taxpayer to the list of persons who may represent taxpayers before VABs.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
