

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

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BILL: PCS/CS/SB 226 (212144)

INTRODUCER: Appropriations Subcommittee on Finance and Tax; Judiciary Committee; and Senator Artiles

SUBJECT: Property Taxes

DATE: April 14, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 226 makes several changes related to property taxes. The bill:

- Requires that property taxes be delinquent before the taxes can be paid as a condition of establishing title to real property by adverse possession;
- Requires property appraisers to waive penalties and interest related to certain improperly claimed exemptions under certain circumstances;
- Authorizes a petitioner to file a petition to the Value Adjustment Board (VAB) up to 60 days late if the petitioner shows extenuating circumstances for not being able to file timely;
- Provides that “good cause” for rescheduling a VAB hearing does not include being scheduled for hearings in different jurisdictions at the same time, unless the hearings involve the same petitioner or unless the petitioner and property appraiser agree to reschedule the hearing;
- Authorizes the clerk of the value adjustment board to request that a property appraiser and the individual, agent, or legal entity that signed the petition to identify up to 15 days per tax roll year that they are unavailable to participate in VAB hearings;
- Provides that an appraisal performed by a person who serves as a special magistrate for the VAB may not be used in a VAB hearing in the same year that the person serves as a special magistrate;
- Exempts from property tax certain municipal property constructed with specified financing; and
- Limits information included in annual Notice of Proposed Property Taxes to statements explaining items on the notice and other relevant information for property owners.

The Revenue Estimating Conference estimates that the bill will reduce local governments' property taxes by \$12.1 million in Fiscal Year 2017-2018, with a recurring reduction of \$17 million.

The bill takes effect July 1, 2017.

**This bill may be a mandate requiring a two-thirds vote of the membership of the Senate. See Section IV. A. of the analysis.**

## II. Present Situation:

### Overview of Property Taxes

#### *The Assessment Process*

The ad valorem tax or "property tax" is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the "just value"<sup>2</sup> of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property's "taxable value."<sup>3</sup>

Each property appraiser annually submits the county's tax roll to the Department of Revenue (DOR) by July 1.<sup>4</sup> In August, the property appraiser sends a Notice of Proposed Property Taxes<sup>5</sup> to each taxpayer providing specific tax information about his or her parcel.<sup>6</sup> Taxpayers who disagree with the property appraiser's assessment or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;<sup>7</sup>
- Appeal the assessment by filing a petition with the county value adjustment board (VAB);<sup>8</sup> or
- Challenge the assessment in circuit court.<sup>9</sup>

Tax collectors mail tax bills in November of each year based on the previous January 1 valuation. Property taxes are delinquent if not paid before April 1 of the following year.<sup>10</sup>

<sup>1</sup> Both real and tangible personal property are subject to the tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at "just value" for purposes of property taxation, unless the state constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> Section 193.1142(1), F.S.

<sup>5</sup> This notice is often referred to as the Truth in Millage (TRIM) notice.

<sup>6</sup> Section 194.011(1), F.S. The timing of the Notice of Proposed Property Taxes varies depending on certain actions by the property appraiser and the taxing authorities. Generally, the notice is mailed in the latter half of August. *See generally* s. 200.065, F.S.

<sup>7</sup> Section 194.011(2), F.S.

<sup>8</sup> Section 194.011(3)(d), F.S.

<sup>9</sup> Section 194.171, F.S.

<sup>10</sup> Section 197.333, F.S.

### ***The Value Adjustment Board Process***

Each county has a VAB, comprised of two members of the governing body of the county, one member of the school board, and two citizen members appointed by the governing body of the county.<sup>11</sup> The county clerk acts as the clerk of the VAB.<sup>12</sup> A property owner may initiate a challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the Notice of Proposed Property Taxes.<sup>13</sup>

The clerk of the VAB will schedule the petition for a hearing, during which a special magistrate will hear testimony and make a recommendation to the VAB on how the petition should be resolved.<sup>14</sup> The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.<sup>15</sup> 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.<sup>16</sup> The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.

Additional information regarding the present situation for each issue is included in the discussion of the Effect of Proposed Changes below.

## **III. Effect of Proposed Changes:**

### **Section 1 - Adverse Possession Based on Payment of Taxes**

***Present situation:*** Adverse possession of property requires a hostile, actual, and visible appropriation of property for a specified number of years, determined in statute.<sup>17</sup> In Florida, an intended adverse possessor must continuously occupy the land for a period of 7 years.<sup>18</sup> Adverse possession may be with or without color of title. Adverse possession without color of title occurs when a person otherwise meets the requirements of adverse possession but does so without the benefit of a written instrument, judgment, or decree.<sup>19</sup>

In Florida, adverse possession without color of title requires that the adverse possessor pay all outstanding taxes and matured installments of special improvement liens levied by the government within a year after entering possession,<sup>20</sup> and file with the property appraiser a return that identifies the property and describes the adverse possession.<sup>21</sup> Upon receipt of an adverse possession return, the property appraiser is required to notify the owner of record and to add a notation to the property tax roll indicating that an adverse possession claim has been made.<sup>22</sup>

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<sup>11</sup> Section 194.015, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 194.011(3)(d), F.S.

<sup>14</sup> Section 194.035, F.S.

<sup>15</sup> Section 194.034(2), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

<sup>18</sup> Sections 95.16(1) and 95.18(1), F.S.

<sup>19</sup> Section 95.18(1), F.S.

<sup>20</sup> Section 95.18(1)(a), F.S.

<sup>21</sup> Section 95.18(1)(b), F.S.

<sup>22</sup> Section 95.18(4), F.S.

Property taxes are payable at the end of November, but they are not delinquent until April 1 of the following year.<sup>23</sup> If an adverse possessor has made payment of the applicable taxes after November, but before April 1, he or she may have paid the taxes before the owner of record made payment. The notice from the property appraiser to the owner of record must inform the owner of record that any tax payment by the owner of record before April 1 takes priority.

If the owner of record pays the taxes to the tax collector before April 1, the property appraiser is required to remove the adverse possession return from the property appraiser's records and remove from the property tax roll the notation that an adverse possession claim has been made.<sup>24</sup>

**Proposed change:** The bill requires that taxes be delinquent before they can be paid as part of an adverse possession claim.

### **Sections 2, 3, 7, and 8 – Waiver of Penalty and Interest**

**Present situation:** Florida provides several property tax exemptions and limitations that reduce or eliminate property taxes on certain property. The majority of exemptions and limitations apply to homestead property. For the property to qualify as homestead property, the owner must use the property as his or her permanent residence.<sup>25</sup>

Many exemptions contain penalty and interest provisions that apply when the exemption is improperly claimed. Generally, these penalty and interest provisions provide that if the property appraiser determines that for any year within the previous 10 years, the person was not entitled to a claimed exemption, the property appraiser must serve on the owner a notice of intent to file a notice of tax lien against the property. The tax lien is equal to the taxes improperly avoided for the prior 10 years, plus a penalty equal to 50 percent of the unpaid taxes, and interest at the rate of 15 percent per year. The owner has 30 days to make payment before the lien is filed.

The penalty and interest provisions are expressly stated in several exemptions and apply to other exemptions when the county waives the general requirement that property owners apply for exemptions annually. The bill amends the penalty and interest provisions for:

- The general homestead exemption, which exempts up to \$50,000 of the assessed value of homesteads from property tax.<sup>26</sup>
- The homestead reduction for living quarters for parents or grandparents, which authorizes counties to reduce the assessed value of homesteads by the value attributed to construction or reconstruction of the property for the purpose of providing living quarters for parents or grandparents.<sup>27</sup>
- The additional homestead exemption for persons 65 years of age and older, which authorizes counties and municipalities to offer up to an additional \$50,000 exemption for homestead property owners age 65 or older with a household income of no more than \$20,000.<sup>28</sup>

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<sup>23</sup> Section 197.333, F.S.

<sup>24</sup> Section 95.18(7)(d), F.S.

<sup>25</sup> FLA. CONST. art. VII, s. 6(a).

<sup>26</sup> See s. 193.155(10), F.S.

<sup>27</sup> Section 193.703(7), F.S.

<sup>28</sup> Section 196.075(9), F.S. The \$20,000 household income limitation is adjusted annually. For 2017, the limit is \$28,841.

- Any exemption for which the county has waived the annual application requirement.<sup>29</sup>

**Proposed change:** For the exemptions discussed above, the bill requires a property appraiser to waive unpaid penalties and interest if the property appraiser determines that:

- The person qualified for the exemption at the time the application was filed; and
- Other than the improperly received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income.

However, the property appraiser may not waive penalty or interest if the person claimed a similar ad valorem tax exemption or a tax credit on another property located in this state or in another state where permanent residency is required as a basis for granting the ad valorem tax exemption or credit.

#### **Section 4 – Joint VAB Petitions, Late-Filed Petitions**

**Present situation:** A petitioner must file his or her petition to the VAB on or before the 25th day after the property appraiser mails the Notice of Proposed Property Taxes (TRIM).<sup>30</sup> However, the VAB is not barred from considering a VAB petition that is filed after the statutory deadline.<sup>31</sup> This treatment has resulted in the VAB hearing petitions long after – sometimes months after – the initial filing deadline has passed.

**Proposed change:** The bill provides that a late-filed petition to the VAB is authorized if the petitioner shows extenuating circumstances demonstrating that the petitioner was unable to file in a timely manner, but the petition must be filed within 60 days after the deadline. However, the VAB is not required to delay its proceedings for the 60-day timeframe and no late petition is authorized after the VAB has concluded its review of petitions received for the tax roll year.

#### **Section 5 – Rescheduling Value Adjustment Board Hearings**

**Present situation:** Petitioners and property appraisers are authorized to reschedule a hearing before a VAB a single time for good cause.<sup>32</sup> “Good cause” is defined to mean circumstances beyond the control of the person seeking to reschedule the hearing which would reasonably prevent adequate representation at the hearing.

**Proposed change:** The bill provides that, for counties in which the number of VAB petitions exceeds 5,000 per year,<sup>33</sup> “good cause” does not include being scheduled for value adjustment board hearings in different jurisdictions at the same time or date, unless the hearings involve the same petitioner or unless the property appraiser and the petitioner agree to reschedule the hearing.

<sup>29</sup> Section 196.011(9), F.S.

<sup>30</sup> Section 194.011(3)(d), F.S.

<sup>31</sup> See Rule 12D-9.015(11), Fla. Admin. Code.

<sup>32</sup> Section 194.032(2)(a), F.S.

<sup>33</sup> Relatively few counties receive 5,000 VAB petitions or more per year. In 2014, only Broward and Miami-Dade Counties received 5,000 or more VAB petitions. See Department of Revenue, VAB Summary Table, available at <http://floridarevenue.com/dor/property/resources/data.html> (select the link for “VAB Summary”) (last visited April 13, 2017).

Additionally, before the commencement of hearings for the tax roll year, the bill allows the clerk of the value adjustment board to request that the individual, agent, or legal entity that signed the petition, and the property appraiser, identify up to 15 business days per tax roll year that they are unavailable for hearings.

### **Section 6 – Use of Appraisals by Special Magistrates**

**Present situation:** In counties having a population of more than 75,000, the VAB must appoint special magistrates to take testimony and make recommendations to the VAB.<sup>34</sup> Some of the special magistrates are themselves appraisers and perform appraisal work as part of their private practice, which may create an appearance of impropriety in certain cases.

**Proposed change:** The bill prohibits the use of an appraisal by a VAB when it was prepared by someone who served as a special magistrate for the VAB in the same year.

### **Section 9 – Exemption for Certain Property Owned by Municipalities**

**Present situation:** The Legislature has authorized counties to impose a local option tourist development tax on the rental of living quarters or accommodations in hotels and other facilities.<sup>35</sup> The base tax rate is 1 or 2 percent, as set by the county.<sup>36</sup> However, additional percentages can be added in certain circumstances.

Section 125.0104(3)(l), F.S., authorizes a county to levy an additional 1 percent tax to pay debt service on bonds used to finance the construction of certain professional sports franchise facilities or convention centers, to operate and maintain convention centers, or to promote tourism in Florida, the nation, and internationally.

Generally, most government-owned property is either immune or exempt from taxation. Property owned by the federal government, the State of Florida, or a Florida county is immune from taxation.<sup>37</sup>

Pertinent to this bill, the Florida Constitution provides that “[a]ll property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.”<sup>38</sup>

Leasehold interests in property owned by a government are also exempt when the lessee performs a governmental, municipal, or public purpose.<sup>39</sup> Florida statutes provide a broad definition of government, municipal or public purpose.<sup>40</sup> For leased government property, government, municipal, or public purpose is deemed to be performed when the lessee performs any function or service for which public funds could be expended.<sup>41</sup> In addition, specific uses or

<sup>34</sup> Section 194.035(1), F.S.

<sup>35</sup> See s. 125.0104, F.S.

<sup>36</sup> Section 125.0104(3)(c), F.S.

<sup>37</sup> For federal property, see *McCulloch v. Maryland*, 17 U.S. 316 (1819); for state property, see *Canaveral Port Auth. v. Dep’t of Revenue*, 690 So. 2d 1226 (Fla. 1996).

<sup>38</sup> FLA. CONST. art. VII, s. 3(a).

<sup>39</sup> Section 196.199(2)(a), F.S.

<sup>40</sup> Section 196.012(6), F.S.

<sup>41</sup> *Id.*

activities are designated as serving a governmental, municipal, or public purpose or function when access to the property is open to the public with or without a charge for admission.<sup>42</sup>

In examining cases involving a tax exemption for private leasehold interests, Florida courts have applied a “governmental-governmental” standard when determining whether an exemption comports with the constitution.<sup>43</sup> When the property is used to provide a governmental purpose, it is considered governmental-governmental and is exempt.<sup>44</sup> However, when the property is used by a lessee for a for-profit use, it is considered governmental-proprietary even when the use involved would qualify as a governmental purpose if conducted by the government. In such governmental-proprietary situations, the constitution does not permit such property to be exempt.<sup>45</sup>

**Proposed change:** The bill exempts all property of municipalities from ad valorem taxes if used for a facility constructed with financing obtained in part by pledging proceeds from a tax authorized under s. 125.0104(3)(1), F.S., if the municipality is otherwise liable for payment of the taxes pursuant to a lease agreement entered into before April 5, 2001. The provision does not apply to property for which an operator of the facility or a tenant under the lease agreement is otherwise liable for payment of such ad valorem taxes.

### **Section 10 – Truth in Millage (TRIM) Notice**

**Present situation:** Each property appraiser submits the county’s tax roll to the Department of Revenue for review by July 1 of each year for assessments as of the prior January 1.<sup>46</sup> In August, the property appraiser sends a Notice of Proposed Property Taxes, otherwise known as the Truth in Millage (TRIM) notice, to all taxpayers, providing specific tax information about their parcels.<sup>47</sup>

**Proposed change:** The bill specifies that the property appraiser may only include in the mailing of the TRIM notice additional statements that explain items on the notice and any other relevant information for property owners.

### **Section 11 – Severability**

The bill provides that the provisions of the act are severable and that if any provision of the act is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

### **Section 12 – Effective Date**

The bill takes effect July 1, 2017.

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<sup>42</sup> *Id.*

<sup>43</sup> *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001).

<sup>44</sup> *Sebring Airport Authority v. McIntyre*, 783 So. 2d at 247.

<sup>45</sup> *Sebring Airport Authority v. McIntyre*, 783 So. 2d at 248.

<sup>46</sup> Section 193.1142(1), F.S.

<sup>47</sup> Section 200.069, F.S.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.<sup>48,49,50</sup>

The mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law, and the exemption for laws having an insignificant impact may not apply. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each chamber of the Legislature.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The provision in the bill granting a property tax exemption for municipal property will apply to a variety of leased government property. The application of relevant law in some of these situations will likely be found to be within the Legislature's authority, while others may be found by the courts to exceed the Legislature's authority under the State Constitution (*See* discussion of section 9 – Exemption for Certain Property Owned by Municipalities, pages 8-9).

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<sup>48</sup> FLA. CONST. art. VII, s. 18(d).

<sup>49</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 7, 2017).

<sup>50</sup> Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 7, 2017).



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

The Revenue Estimating Conference estimates that the bill will reduce local governments' property taxes by \$12.1 million in Fiscal Year 2017-2018, with a recurring reduction of \$17 million.

**B. Private Sector Impact:**

If the property appraiser waives penalties and interest, a property owner who should not have received the benefit of a property tax exemption or limitation will benefit from a waiver.

**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: 95.18, 193.155, 193.703, 194.011, 194.032, 194.035, 196.011, 196.075, and 200.069.

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

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

**Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 13, 2017:**

The committee substitute:

- Removes provisions expanding the definition of “educational institution” for purposes of the property tax;
- Removes provisions allowing the property appraiser to grant the \$25,000 exemption in the first year that tangible personal property was not included on a return;
- Removes provisions creating a rebuttable presumption of charitable purpose for entities that are 501(c)(3) charitable entities;
- Removes provisions that increased from \$500 to \$5,000 the exemption for widows, widowers, blind, and disabled persons.
- Inserts provisions granting a property tax exemption for certain municipal property.

**CS by Judiciary on March 22, 2017:**

This CS:

- Creates a rebuttable presumption, rebuttable upon a showing of clear and convincing evidence by the property appraiser, that an organization meets a charitable purpose if the entity qualifies as a s. 501(c)(3) organization under the Internal Revenue Code;
- Adds to the list of educational institutions qualifying for a property exemption a nonprofit technical school awarding industry-issued certifications;
- Broadens the tax exemption on property owned by educational institutions from property used exclusively, to property used predominantly for educational purposes, and provides for the exemption to apply in proportion to the exempt use of the property;
- Increases from \$500 to \$5,000 the additional homestead exemption afforded to widows, widowers, blind persons or totally and permanently disabled persons;
- Requires, rather than authorizes a property appraiser to waive unpaid penalties and interest upon a showing of good cause and after determining that the person did not intend to illegally avoid tax payments and that no benefit accrued to the property owner; and
- Removes provisions from the bill addressing the judicial review of property tax decisions made by a Value Adjustment Board, and circumstances in which a condominium association, cooperative association, or a homeowners' association may file a single joint petition on behalf of its members.

**B. Amendments:**

None.