

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 Judiciary

BILL: CS/SB 226

INTRODUCER: Judiciary Committee and Senator Artilles

SUBJECT: Property Taxes

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			AFT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 226 makes several changes related to the property tax process. Specifically, these changes:

- Require that the taxes paid as a condition of establishing title to real property by adverse possession be “delinquent” taxes instead of “outstanding” taxes;
- Require a property appraiser to waive penalties and interest when a taxpayer improperly claims an exemption under certain circumstances, unless the person claimed a homestead-related exemption, limitation, or reduction on another property;
- Authorize a petitioner to file a late-filed petition to the Value Adjustment Board (VAB) if the petitioner shows extenuating circumstances and files the petition within 60 days after the petition deadline;
- Authorize the value adjustment board to hear a petition that is filed up to 25 days after the petition deadline if the petitioner shows good cause and the county has extended the tax roll before all VAB hearings have been completed;
- Provide that “good cause” for rescheduling a value adjustment board hearing does not include being scheduled for value adjustment board hearings in different jurisdictions at the same time, unless the hearings involve the same petitioner or the petitioner and property appraiser agree to reschedule the hearing;
- Provide that an appraisal performed by a person who serves as a special magistrate for the value adjustment board may not be used in a value adjustment board hearing in the same year that the person serves as a special magistrate;

- Authorizes the property appraiser to grant the \$25,000 exemption from the tangible personal property tax even if the taxpayer has not previously filed a personal property tax return;
- 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 entity issuing industry certifications that is eligible for workforce education funding, and a nonprofit entity that has entered into statewide articulation agreements with the State Board of Education for articulation of postsecondary credit for approved industry 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; and
- Limits information included in annual Truth in Millage notices to information related to the tax notice.

The Revenue Estimating Conference has not yet reviewed the bill for a fiscal impact.

II. Present Situation:

Overview of Property Taxes

Ad Valorem 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.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³

Each property appraiser submits the county’s tax roll to the Department of Revenue (DOR) for review by July 1 of each year for assessments as of the prior January 1.⁴ In August, the property appraiser sends a Truth in Millage (TRIM) notice to each taxpayer providing specific tax information about his or her parcel.⁵ Taxpayers who disagree with the property appraiser’s assessment or the denial of an exemption or property classification may:

¹ 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.

² 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).

³ *See* s. 192.001(2) and (16), F.S.

⁴ Section 193.1142(1), F.S.

⁵ Section 200.069, F.S.

- Request an informal meeting with the property appraiser;⁶
- Appeal the assessment by filing a petition with the county value adjustment board (VAB);⁷ or
- Challenge the assessment in circuit court.⁸

Taxes become payable on November 1. However, assessments subject to VAB petitions may not become final by the November 1 deadline. If a petitioner challenges a VAB assessment, the board of county commissioners may request that the tax collector extend the tax roll⁹ prior to the completion of VAB proceedings and instruct the tax collector to begin issuing tax notices based on the property appraiser's initial tax roll. As part of extending the roll, the board may require the VAB to certify the portion of the roll that it has completed.¹⁰

Within 20 working days after receiving the certified tax roll, tax collectors send each taxpayer a tax notice.¹¹ Property taxes are delinquent if they not paid before April 1 of the year following the assessment year.¹²

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.¹³ The county clerk acts as the clerk of the VAB.¹⁴ 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 TRIM notice.¹⁵

The clerk of the VAB is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling hearings.

Petitioners before the board may be represented by:

- An employee of the taxpayer or an affiliated entity;
- An attorney who is a member of The Florida Bar;
- A licensed real estate appraiser or broker;
- A certified public accountant;
- A power of attorney; or

⁶ Section 194.011(2), F.S.

⁷ Section 194.011(3), F.S.

⁸ Section 194.171, F.S.

⁹ Extending the tax roll enables the VAB to complete its review of petitions while the local government uses the preliminary roll to establish the budget.

¹⁰ See ss. 193.122(1) and 197.323, F.S. The value adjustment board certifies each assessment roll, based on its adjustments, pursuant to an order by the board of county commissioners, and then again after all hearings have been held. Certificates are attached to each roll. Unless the board of county commissioners extends the roll, the VAB must complete all hearings and certify the roll to the property appraiser by June 1 following the assessment year.

¹¹ Section 197.322, F.S.

¹² Section 197.333, F.S.

¹³ Section 194.015, F.S.

¹⁴ *Id.*

¹⁵ Section 194.011(3)(d), F.S.

- A person having written authorization to act on the taxpayer's behalf without compensation.¹⁶

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.¹⁷ 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.¹⁸ If a special magistrate has been appointed, the recommendations of the special magistrate must be considered by the VAB.¹⁹ 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 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.²⁰ In Florida, an intended adverse possessor must continuously occupy the land for a period of 7 years.²¹ The use of the property by the adverse possessor must be inconsistent with the use of the land by the owner.²² For example, the court upheld as an inconsistent use of property the person's alteration of land by fencing it, farming on it, and raising animals on it.²³ 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.²⁴

To be valid as an adverse possession without color of title, a person must have paid all outstanding taxes and matured installments of special improvement liens levied by the government within a year after entering possession.²⁵ Taxes are payable at the end of November, but they are not delinquent until April 1 of the following year.²⁶

Proposed change: The bill requires a person who is seeking to establish title to real property by adverse possession to pay the "delinquent" taxes instead of the "outstanding" taxes on the real property. This change will give the owner of title to the property a few more months to defeat an attempt at adverse possession by paying the outstanding taxes that have not become delinquent.

¹⁶ Section 194.034(1)(a), (b), and (c), F.S.

¹⁷ Section 194.034(2), F.S.

¹⁸ *Id.*; See also Rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

¹⁹ Section 194.034(2), F.S.

²⁰ BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

²¹ Sections 95.16(1) and 95.18(1), F.S.

²² 2 FLA JUR ADVERSE POSSESSION AND PRESCRIPTION s. 29.

²³ *Porter v. Lorene Inv. Co.*, 297 So.2d 622, 624-625 (Fla. 1st DCA 1974).

²⁴ Section 95.18(1), F.S.

²⁵ Section 95.18(1)(a), F.S.

²⁶ Section 197.333, F.S.

Sections 2, 3, 7, 9, and 12 - Exemptions on Homestead Property

Present situation: General Homestead Exemption – Florida exempts up to \$50,000 of the assessed value of homesteads from property tax. To qualify, the homeowner must make the homestead a permanent residence, and may claim only one homestead.²⁷ If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a homestead exemption, the property appraiser must serve the owner with a notice of tax lien.²⁸ The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the exemption due to a property appraiser’s clerical mistake or omission, no penalty or interest is assessed.²⁹

Homestead Exemption for Living Quarters for Parents or Grandparents -- Counties may offer a discretionary reduction in assessed value to homeowners providing living quarters to a parent or grandparent.³⁰ If the county grants the reduction, to qualify, a homeowner must physically alter the property to provide the living quarters. The parent or grandparent must be at least 62 years of age and reside on the owner’s homestead as a primary place of residence.³¹

If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a reduction under this provision, the property appraiser will serve the owner with a notice of tax lien. The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the reduction due to a property appraiser’s clerical mistake or omission, no penalty or interest is assessed.³²

Additional Homestead Exemption for Persons 65 Years of Age and Older -- Counties may offer a discretionary exemption to homeowners who are at least 65 years of age with a household income of no more than \$20,000.³³

If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a the exemption, the property appraiser will serve the owner with a notice of tax lien. The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the exemption due to a property appraiser’s clerical mistake or omission, no penalty or interest is assessed.³⁴

Additional Homestead Exemptions -- Additional homestead exemptions are available to homeowners who qualify as totally and permanently disabled veterans (s. 196.081, F.S.);

²⁷ Art. VII, Sect. 6(a) and (b), FLA. CONST.

²⁸ Section 193.155(10), F.S.

²⁹ *Id.*

³⁰ Art. VII, s. 4(f), FLA. CONST.

³¹ Section 193.703(1) and (3), F.S.

³² Section 193.703(7), F.S.

³³ Art. VII, s. 6(d), FLA. CONST.

³⁴ Section 196.075(2) and (9), .F.S.

disabled veterans confined to wheelchairs (s. 196.091, F.S.); totally and permanently disabled persons (s. 196.101, F.S.); deployed service members (s. 196.173, F.S.); and widows, widowers, and blind persons (s. 196.202, F.S.)

Proposed change: For the exemptions discussed above, the bill requires a property appraiser to waive unpaid penalties and interest otherwise owed by a property owner who received an exemption that he or she was not entitled to, after the property appraiser determines that:

- The person qualified for the exemption or limitation at the time the application was filed;
- The person acted in good faith; 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 homestead-related exemption, limitation or reduction on another property.

The bill also increases from \$500 to \$5,000 the additional homestead exemption available to a widow, widower, blind person, or totally and permanently disabled person.

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 following the Notice of Proposed Property Taxes (TRIM).³⁵ However, the VAB is not barred from considering a VAB petition that is filed after the statutory deadline.³⁶ 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 must be filed within 60 days after the 25th day after the mailing of 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.

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.³⁷ “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 specifically provides that “good cause” does not include being scheduled for value adjustment board hearings in different jurisdictions at the same time or date

³⁵ Section 194.011(3)(d), F.S.

³⁶ See Rule 12D-9.015(11), Fla. Admin. Code

³⁷ Section 194.032(2)(a), F.S.

unless the hearings involve the same petitioner or unless the property appraiser and the petitioner agree to reschedule the hearing.

Additionally, the bill allows the individual, agent, or legal entity that signed the petition, and the property appraiser, to identify up to 10 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.³⁸ Some of the special magistrates are themselves appraisers, which may create an appearance of impropriety in certain cases.

Proposed change: The bill prohibits a special magistrate performing appraisals for submission to the VAB in the same tax year in which the special magistrate serves the VAB.

Sections 8 and 11 – Educational Institutions and Charitable Entities

Present situation: Florida exempts property owned by educational institutions and used exclusively for educational purposes from property tax.³⁹ An educational institution is a federal, state, religious or other private school, offering education from Pre-K through 12th grade, a state college or university, a qualifying private institution of higher education, or a qualifying direct-support organization.⁴⁰ The property of an educational institution is exempt from property tax if the property is used exclusively for educational purposes.⁴¹ An exclusive use of property is a use of property solely for exempt purposes.⁴²

Proposed change: The bill expands the definition of “educational institution” to include nonprofit entities that issue industry certifications identified by the Chancellor Career and Adult Education as being eligible for workforce education funding per approval by the State Board of Education pursuant to s. 1008.44, F.S., or its successor. The bill also adds nonprofit entities that have entered into a statewide articulation agreement with the State Board of Education for articulation of postsecondary credit for related degrees for approved industry certifications.

The bill also grants the educational exemption for property used predominantly for educational purposes. For non-exclusive use, the exemption is granted in proportion to the extent of the exempt use of the property.

³⁸ Section 194.035(1), F.S.

³⁹ Section 196.198, F.S.

⁴⁰ Section 196.012(5), F.S.; Qualifying private institutions of higher education include schools accredited by the Southern Association of Colleges and Schools or the Florida Council of Independent Schools, or a nonprofit private school primarily offering courses for continuing education credit in postgraduate dental education (s. 196.012(5), F.S.)

⁴¹ Section 196.198, F.S.

⁴² Section 196.012(2), F.S.

Present situation: Florida exempts from property taxes property used exclusively for charitable purposes.⁴³ Specific exemptions are outlined for various charitable activities, including:

- Hospitals, nursing homes, and homes for special services;⁴⁴
- Property used by nonprofit homes for the aged;⁴⁵
- Affordable Housing;⁴⁶ and
- Not-for-profit sewer and water companies.⁴⁷

Proposed change: The bill provides that a nonprofit entity that receives a determination from the Internal Revenue Service that it is exempt from federal income tax under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of that code, is granted a rebuttable presumption of charitable purpose. The property appraiser must rebut the presumption of charitable purpose by clear and convincing evidence.

Section 10 – The Assessment of Tangible Personal Property

Present situation: Property tax applies not only to real property, but also to certain categories of personal property. Florida divides personal property into four categories for tax purposes: household goods, intangible personal property, inventory, and tangible personal property.⁴⁸ Household goods, inventory, and intangible personal property are exempt from the property tax.⁴⁹

Owners of taxable tangible personal property are required to file a return with the property appraiser by each April 1.⁵⁰ A single return must be filed for each site in the county where the owner of tangible personal property transacts business.⁵¹ Florida requires that a single return include all taxable property in certain instances.⁵² The first \$25,000 of value included on a tangible personal property return is exempt.⁵³

If an owner of tangible personal property fails to file a return and the property appraiser identifies the tangible personal property and includes it on the tax roll, the property appraiser may not grant the \$25,000 exemption; however, the property appraiser has the option of granting the \$25,000 exemption in subsequent years.⁵⁴

Proposed change: The bill authorizes the property appraiser to grant the \$25,000 exemption in the first year that the tangible personal property is included on the tax roll, even if the owner does not file a return.

⁴³ See generally ss. 196.195 and 196.196, F.S.

⁴⁴ Section 196.197, F.S.

⁴⁵ Section 196.1975, F.S.

⁴⁶ Section 196.1978, F.S.

⁴⁷ Section 196.2001, F.S.

⁴⁸ Section 192.001(11), F.S.

⁴⁹ See ss. 196.181 and 196.185, F.S.

⁵⁰ Section 193.062(1), F.S.

⁵¹ Section 196.183(1), F.S.

⁵² *Id.*

⁵³ Section 196.183, F.S.

⁵⁴ Section 196.183(4), F.S.

Section 13 – 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 1.⁵⁵ In August, the property appraiser sends a Truth in Millage (TRIM) notice to all taxpayers providing specific tax information about their parcel.⁵⁶

Proposed change: This bill specifies that the TRIM notice may include only statements explaining an item on the notice. This limit on TRIM mailings may save money on mailings.

Section 14 – Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet reviewed the bill for a fiscal impact. However, the bill may result in less ad valorem revenue to counties, municipalities, and special districts due to the expanded definition of educational institution and due to the increased tax exemption for widows, widowers, blind persons, and the totally disabled.

B. Private Sector Impact:

In providing flexibility to the property appraiser to waive 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.

In providing flexibility to the property appraiser to authorize the \$25,000 exemption on tangible personal property, a person who fails to file a return might still receive the exemption.

⁵⁵ Section 193.1142(1), F.S.

⁵⁶ Section 200.069, F.S.

A private entity fulfilling an educational or charitable purpose that newly qualifies for a full or partial exemption of property tax may benefit from a reduction in property taxes as a result of this bill.

A person who qualifies for the additional homestead exemption afforded to a widow, widower, blind person, or a totally and permanently disabled person may benefit from the increased exemption from \$500 to \$5,000.

C. Government Sector Impact:

The Department of Revenue indicates that it does not expect an impact from the provisions of the bill as filed.⁵⁷

The property appraiser may benefit generally from having increased flexibility in waiving penalties and allowing an exemption on tangible personal property, and having the same deadlines as a taxpayer in a legal action.

A local government subject to the notice requirement for a public hearing on a non-ad valorem assessment roll may save money on publication costs.

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, 196.012, 196.075, 196.183, 196.198, 196.202, 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.)

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;

⁵⁷ Department of Revenue, *2017 Agency Legislative Bill Analysis* (Jan. 19, 2017).

- 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.