

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: SB 226
 INTRODUCER: Senator Artiles
 SUBJECT: Property Taxes
 DATE: February 6, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____

I. Summary:

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

- Require the payment of all “delinquent” taxes instead of all “outstanding” taxes on a parcel of real property as a condition of establishing title by adverse possession;
- Extend the time that the property appraiser has to appeal a value adjustment board decision to 60 days from 30 days and grants both the property appraiser and the taxpayer 30 days to file cross-claims in any appeal;
- Allow a property appraiser to waive penalties and interest when a taxpayer improperly claims an exemption under certain circumstances;
- Limit the petitioners in a joint petition to the value adjustment board by a condominium association, cooperative association, or homeowners’ association to those unit or parcel owners who have opted into the petition instead of those who have not opted out;
- Authorizes 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;
- Provides 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;
- Provides 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;
- Requires that when a value adjustment board reduces an assessment and the property appraiser appeals the decision to the court, the original assessment by the property appraiser must be used to calculate subsequent years’ assessment limitations until the court proceedings are resolved;
- 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;

- Allows a local government that is seeking to impose a special assessments to avoid publishing notice in a local newspaper by including additional information in first class mailings to affected taxpayers; and
- Limits information included in annual Truth in Millage notices to information related to the tax notice.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

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:

- 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

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.

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.

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
- 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.

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.

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.

Additional information regarding the present situation is included in the discussion of the effect of the 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 the payment of all "delinquent" taxes instead of all "outstanding" taxes on a parcel of real property as a condition of establishing title by adverse possession. This change may help the title owner retain ownership of property by paying an outstanding tax bill when title to the property is being sought by an adverse possessor.

Sections 3 and 10 - Judicial Review of Property Taxes

Present situation: A taxpayer or a property appraiser may appeal a decision of the value adjustment board (VAB) to the circuit court. A petitioner must file the action within 60 days after the date the assessment is certified, or if the petitioner appeals the property appraiser's decision to the VAB, within 60 days after the VAB renders its decision.²⁷

Before a petitioner may file a legal action, the taxpayer must pay the collector the amount that the taxpayers admits to owing in good faith. Once the taxpayer has paid the requisite amount, and if the action is timely filed, no further payment of taxes is required until final disposition of the action.²⁸

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.

²⁷ Section 194.171(2), F.S.

²⁸ Section 194.171(3), F.S.

For a property appraiser to appeal a decision of the VAB, one of the following conditions must be present:

- The property appraiser determines and affirmatively asserts that there is a specific constitutional, statutory, or administrative rule violation;
- A variance exceeds a certain percent, based on the assessment; or
- The property appraiser asserts to the Department of Revenue that the decisions of the VAB demonstrate a consistent and continuous violation of the intent of law or administrative rules.²⁹

If the property appraiser chooses to appeal a decision of the VAB, the property appraiser must file an appeal within 30 days after the VAB completes its review of petitions and the property appraiser recertifies the tax roll.³⁰

Proposed change: The bill extends a property appraiser's time to file an appeal to 60 days from 30 days, the same number of days as that currently provided to a taxpayer. The bill also clarifies that each side has 30 days from the date of the original complaint to file a counterclaim.

Sections 4, 5, 11, 12 and 13 - Exemptions on Homestead Property

Present situation: General Homestead Exemption -- Every homeowner in the state qualifies for a homestead exemption on taxes. The exemption reduces by up to \$50,000 the assessed valuation on the home. To qualify, the homeowner must make the homestead a permanent residence, and may claim only one homestead.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 homestead exemption, the property appraiser will serve the owner with a notice of tax lien.³² 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 grant of the exemption is due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.³³

In addition to a violation based on a person claiming homestead on more than one property in the state, a person with out-of-state residency may attempt to claim homestead on property in the state. A property appraiser must file a notice of lien on homestead property that is subject to an estate proceeding if the owner, when alive, was at the same time a permanent resident of another state.³⁴ The property appraiser must file the notice of tax lien within 3 years after the death of the person.³⁵ The estate 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 circuit court determines that the decedent was a permanent resident of this state during the time an exemption was allowed, the

²⁹ Section 194.036(1), F.S.

³⁰ Section 193.122(4), F.S.

³¹ Art. VII, Sect. 6(a) and (b), FLA. CONST.

³² Section 193.155(10), F.S.

³³ *Id.*

³⁴ Section 196.161(1)(a), F.S.

³⁵ *Id.*

property appraiser must cancel the lien.³⁶ The same notice of lien and penalties apply to a living owner who is not a permanent resident of the state.³⁷

Homestead Exemption for Living Quarters for Parents or Grandparents -- Counties may offer a discretionary exemption to homeowners providing living quarters to a parent or grandparent.³⁸ If the county decides to allow the exemption, to qualify, a homeowner must physically alter the property to provide the living quarters. Further, 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.³⁹

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 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 grant of the exemption is due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.⁴⁰

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 \$20,000.⁴¹

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 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 grant of the exemption is due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.⁴²

Additional Homestead Exemptions -- Additional homestead exemptions are available to homeowners who qualify as totally and permanently disabled veterans (s. 196.081, 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 authorizes 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 upon good cause, after the property appraiser determines that:

- The owner did not intend to illegally avoid the payment of unlawful taxes; and
- "There was no benefit to the property owner" from failing to pay taxes.

³⁶*Id.*

³⁷ Section 196.161(1)(b), F.S.

³⁸ Art. VII, s. 4(f), FLA. CONST.

³⁹ Section 193.703(1) and (3), F.S.

⁴⁰ Section 193.703(7), F.S.

⁴¹ Art. VII, s. 6(d), FLA. CONST.

⁴² Section 196.075(2) and (9), F.S.

However, the intent of the provisions of the bill is not clear where it refers to a property owner who improperly receives an exemption but receives “no benefit.”

Section 6 – Joint VAB Petitions, Late-Filed Petitions

Present situation: A condominium association, cooperative association, or homeowners’ association, upon approval of its board, may file a single joint petition before the VAB on behalf of its owners.⁴³ Prior to filing a single joint petition, the association must notify the owners of its intent to petition the VAB. The association must provide unit owners at least 20 days to opt out of the petition in writing.⁴⁴

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).⁴⁵

Proposed change: For joint petitions by an association, the bill requires that each individual unit owner opt in to the petition. If the owner does not opt-in, the association may not list the unit owner on the petition.

The bill provides that a late-filed petition to the VAB is authorized if the petitioner shows good cause, but must be filed within 30 days after the 25th day after the mailing of the “Notice of Proposed Property Taxes.”

Section 7 – 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.⁴⁶ “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.

Section 8 – 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.⁴⁷ 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 has serves the VAB.

⁴³ Section 194.011(3)(e), F.S. A single joint petition may be filed on any association members who own parcels of property which the property appraiser determines are substantially similar.

⁴⁴ *Id.*

⁴⁵ Section 194.011(3)(d), F.S.

⁴⁶ Section 194.032(2)(a), F.S.

⁴⁷ Section 194.035(1), F.S.

Section 9 – Assessment Limitations during the pendency of Court Proceedings

Present situation: Florida has two property assessment limitations: Save Our Homes (SOH), which applies to homestead property,⁴⁸ and the general 10-percent limitation, which applies to all other property⁴⁹. Property assessment limitations limit the annual increase in a property's assessed value for tax purposes. Stated simply, while a property's market value may increase, for example, by 15 percent in a given year, assessment limitations are used to limit the increase in the assessed value to a lesser amount for tax purposes. The SOH limits annual increases in the assessed value of homesteads to the lesser of three percent or the increase in the consumer price index (CPI), while the general 10-percent limitation limits increases in assessed value of all other property to 10 percent.

Currently, when a property owner wins a petition at the VAB, the reduction in value will consequently lower the assessment limitations in subsequent years. If the property appraiser appeals that VAB decision in court, the litigation may take years. If the property appraiser prevails in court, the assessment limitation for all of the intervening years are readjusted upwards, increasing the tax due for every intervening year; the property owner ends up owing much more than the originally contested tax amount, and the amount comes due all at once.

Proposed change: The bill provides that if the property appraiser appeals a VAB decision to court, the assessment limitation in subsequent years is based on the original assessment, until the court issues an order.

In some instances, the VAB reduces the taxable value of the property. During the pendency of the litigation, the property owner pays property taxes based on the reduced assessment. Every year after the protested year, the property taxes are calculated based on the reduced amount until resolution of the court challenge. If the property owner does not prevail, he or she must pay all of the taxes based on the original assessment. If the owner cannot pay the tax bill all at once, a lien is placed on the property (pursuant to the tax certificate process.)

By requiring a property owner to pay taxes on the higher assessment, the property owner will avoid having to make a large tax payment if the property appraiser ultimately prevails in the appeal. On the other hand, the bill forces the taxpayer to pay higher taxes even though he or she prevailed at the VAB.

Section 14 – 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.⁵⁰ Household goods, inventory, and intangible personal property are exempt from the property tax.⁵¹

⁴⁸ See s. 193.155, F.S.

⁴⁹ See ss. 193.1554 and 193.1555, F.S.

⁵⁰ Section 192.001(11), F.S.

⁵¹ See ss. 196.181 and 196.185, F.S.

Owners of taxable tangible personal property are required to file a return with the property appraiser by each April 1.⁵² A single return must be filed for each site in the county where the owner of tangible personal property transacts business.⁵³ Florida requires that a single return include all taxable property in certain instances.⁵⁴ The first \$25,000 of value included on a tangible personal property return is exempt.⁵⁵

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.⁵⁶

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.

Section 15 – Newspaper Notices of Proposed Assessments

Present situation: A local government must hold a public hearing to adopt a non-ad valorem assessment roll if:

- The assessment is levied for the first time;
- The assessment is increased beyond the maximum rate authorized in law or judicial decree;
- The local government’s boundaries have changed, unless all newly affected property owners have consented in writing to the assessment; or
- There is a change in the purpose for the assessment or the use of the revenue generated by the assessment.⁵⁷

The local government must notice the hearing at least 20 days before the hearing. Notice of hearing is effectuated through U.S. mail and by publication in a local newspaper of general circulation.⁵⁸

Proposed change: The bill authorizes a local government to satisfy the newspaper requirement by including in the mailing the name of the local government board, date and location of the hearing, and a link to a website for additional information. This will remove the cost of publication in the newspaper if the local government chooses the alternate option.

Section 16 – 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 1.⁵⁹ In August,

⁵² Section 193.062(1), F.S.

⁵³ Section 196.183(1), F.S.

⁵⁴ *See id.*

⁵⁵ Section 196.183, F.S.

⁵⁶ Section 196.183(4), F.S.

⁵⁷ Section 197.3632(4)(a), F.S.

⁵⁸ Section 197.3632(4)(b), F.S.

⁵⁹ Section 193.1142(1), F.S.

the property appraiser sends a Truth in Millage (TRIM) notice to all taxpayers providing specific tax information about their parcel.⁶⁰

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 17 – 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 determined the fiscal impact of the bill.

B. Private Sector Impact:

In providing flexibility to the property appraiser to waive penalties and interest, a property owner who should not have claimed an exemption 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.

This bill requires a property owner who prevails in a challenge of an assessment at the VAB to pay taxes based on the original higher assessment if the property appraiser appeals the VAB decision. By paying taxes on the higher assessment during the appellate process, the property owner will avoid a large bill for back taxes or a potential tax lien if the property appraiser ultimately prevails. On the other hand, the property owner who prevails at the VAB and on appeal, will have been deprived of his or her funds throughout the appellate process.

⁶⁰ Section 200.069, F.S.

C. Government Sector Impact:

The Department of Revenue indicates that it does not expect an impact from the provisions of the bill.⁶¹

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:

In various places in the bill, a property appraiser may waive unpaid penalties and interest for a person who should not have received a property tax exemption. A waiver is based on good cause and a showing that the taxpayer did not intend to avoid paying lawful taxes or benefit from not paying enough. What is meant by ‘good cause,’ ‘intent,’ and ‘benefit’ is unclear, especially as a taxpayer would have received the benefit of an exemption that he or she was not entitled to. An amendment is recommended to define or further explain these concepts.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.18, 192.0105, 193.122, 193.155, 193.703, 194.011, 194.032, 194.035, 194.036, 194.171, 196.011, 196.075, 196.161, 196.183, 197.3632, and 200.069.

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

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

None.

B. Amendments:

None.

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

⁶¹ Department of Revenue, *2017 Agency Legislative Bill Analysis* (Jan. 19, 2017).