

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 Community Affairs

BILL: SB 1254

INTRODUCER: Senator Bean

SUBJECT: Ad Valorem Assessments

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1254 amends the homestead assessment statute to provide two additional instances that are not to be considered a “change of ownership” for property assessment purposes. A change of ownership causes the property to be assessed at market value, where otherwise a property would have a lower assessment and therefore lower tax burden. The first instance is where homestead property’s title is transferred and the owner entitled to the homestead exemption is both grantor and grantee, and one or more other joint tenants with rights of survivorship are removed from the title. The second is where the transfer occurs with respect to a property where one joint tenant dies, and following the transfer the surviving owner entitled to the homestead exemption remains an owner and entitled to the homestead exemption.

The bill further provides that ancillary improvements, like other changes, additions, and improvements, that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the property’s assessed value.

The bill takes effect July 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, 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 relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ on real estate or tangible personal property, and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

Homestead Assessments

Homestead property is assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are limited to the lower of three percent of the assessed value of the property for the prior year or the percentage change in the Consumer Price Index for All Urban Consumers.⁶ A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title, except where:⁷

- After the change the same owner is still entitled to the same homestead exemption and:
 - The transfer of title is to correct an error;
 - The transfer is between legal and equitable title; or
 - The change is by means of an instrument in which the owner is listed as both grantee and grantor, and one or more other individuals who do not apply for a homestead exemption are named as grantee;
- The change is between husband and wife, including a change due to divorce;
- The transfer occurs by intestate inheritance to a surviving spouse or minor children; or
- Upon the death of the owner, the transfer is between the owner and someone who is a permanent resident and legal or natural dependent of the owner.

Changes, Additions, and Improvements to Real Property

One way the Florida Constitution specifically authorizes the Legislature to provide for property valuations at less than just value is by specifying certain improvements that cannot be considered in evaluating a property’s assessed value. Currently the improvements under this provision are

¹ Both real property and tangible personal property are subject to 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 Florida 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 FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ FLA. CONST. art. VII, s. 4(d).

⁷ Section 193.155(3)(a), F.S.

those made to improve a residential property's resistance to wind damage, and any installation of solar or renewable energy devices.⁸

A homestead property's tax assessment cannot be increased in one year by more than the greater of 3 percent or the percent change in the Consumer Price Index, except for under certain circumstances.⁹ One such exception is that changes, additions, and improvements to homestead property are assessed at market value, which can increase the total assessment by any amount.¹⁰

However, those changes, additions, and improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the homestead property's assessed value as long as the new property's square footage does not exceed 110 percent of the property before the change.¹¹ Additionally, the homestead property's assessed value may not increase if the total square footage of the property as changed does not exceed 1,500 feet.¹² After a change, addition, or improvement that results in property more than 110 percent of its previous square footage or more than 1,500 feet, the assessed value is required to be increased by the value of that portion in excess of 110 percent of the previous area or 1,500 feet.¹³

This statutory provision also applies to non-homestead property if, during the year when the damage or destruction took place, the owner applies for and is granted a homestead exemption.¹⁴ These provisions apply as long as the changes, additions or improvements are commenced within three years after the January 1 following the damage or destruction of the homestead.¹⁵ When property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.¹⁶

Nonhomestead Property

The assessment on nonhomestead property, residential or not, cannot increase by more than 10 percent each year, except for in the same circumstances as provided for homestead property.¹⁷ The same provisions discussed above with respect to changes, additions, and improvements which replace damaged or destroyed property also apply to nonhomestead property.¹⁸ Changes, additions, or improvements that replace all or a portion of nonhomestead property damaged or destroyed by misfortune or calamity shall not increase the property's assessed value when the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction.¹⁹

⁸ FLA. CONST. art. VII, s. 4(i).

⁹ FLA. CONST. art. VII, s. 4(d).

¹⁰ Section 193.155(4)(a), F.S.

¹¹ Section 193.155(4)(b), F.S.

¹² Id.

¹³ Id.

¹⁴ Section 193.155(4)(c), F.S.

¹⁵ Fla. Admin. Code R. 12D-8.0063(3).

¹⁶ Section 193.155(5), F.S.

¹⁷ FLA. CONST. art. VII, s. 4(h); Section 193.1555, F.S.

¹⁸ Section 193.1554(6), F.S.; Section 193.1555(5), F.S.

¹⁹ Section 193.1554(6), F.S.; Section 193.1555(6), F.S.

III. Effect of Proposed Changes:

The bill amends s. 193.155, F.S., to provide that it is not considered a change of ownership for assessment purposes when homestead property's title is transferred via an instrument in which the owner entitled to the homestead exemption is both grantor and grantee, and one or more other individuals who held title as joint tenants with rights of survivorship with the owner are removed from the title.

The bill creates s. 193.155(3)(a)5., F.S., which states it is not considered a change of ownership when the transfer occurs with respect to a property where:

- Multiple owners hold title as joint tenants with rights of survivorship;
- One or more owners were entitled to and received the homestead exemption on the property;
- The death of one or more owner occurs; and
- Following the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

The bill further provides that ancillary²⁰ improvements, like other changes, additions, and improvements, that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the property's assessed value. For each category of property (homestead residential property, nonhomestead residential property, and nonhomestead nonresidential property), the same amendments are made. An assessment on a property improved, changed, or added to replace property damaged or destroyed by misfortune or calamity must be calculated using the property's assessed value as of the January 1 immediately preceding the damage or destruction. As in current law, when property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) 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 cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at \$2.2 million.

The mandate provisions may apply because the bill holds that certain transfers no longer trigger assessment at just value, and expands the categories of replacement improvements

²⁰ The term "ancillary improvement" is not defined in law, but might be generally understood to include extra features, such as boat docks, that are not attached to a house and not assessed on a square footage basis. See DOR Advisory Memorandum from Steve Keller RE *Section 193.155(4) and Changes, Additions, or Improvements to Homestead Property*, February 20, 2018 (on file with the Senate Committee on Community Affairs).

property appraisers must appraise at less than just value. If the amount of ad valorem tax revenue lost due to these effects is determined to exceed \$2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

B. Private Sector Impact:

The bill may have a positive fiscal impact on the private sector by allowing property owners to maintain their homestead exemption upon certain property transfer actions that might otherwise be considered a change of ownership. Additionally, homestead property owners may face a positive fiscal impact due to the ability to rebuild “ancillary improvements” without increasing their assessed value.

C. Government Sector Impact:

The bill may result in a negative fiscal impact to local governments due to certain homestead property transfers no longer triggering a just value assessment, and due to the expansion of the types of improvements property appraisers must appraise at less than just value to include “ancillary improvements” to homestead property damaged by misfortune or calamity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1554, and 193.1555.

This bill reenacts section 193.1557 of the Florida Statutes.

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.