

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 Finance and Tax

BILL: SB 1610

INTRODUCER: Senator Rodriguez

SUBJECT: Ad Valorem Tax Abatement

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1610 provides property tax relief to property owners affected by a sudden and unforeseen collapse of a residential building in 2021.

The bill requires the tax collector to abate the property tax associated with the value of the residential improvement that collapsed, and it requires the Department of Revenue to issue refunds to property owners for any remaining amount of tax levied.

The bill provides definitions and authorizes the local value adjustment board to hear appeals from property owners denied relief.

The abatement provision applies retroactively to January 1, 2021.

The Revenue Estimating Conference has not analyzed the bill.

The bill takes effect upon becoming a law.

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 assessed or “just value”² of property within the taxing jurisdiction 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 and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes; land used for conservation purposes; historic properties when authorized by the county or municipality; and certain working waterfront property.⁷

Tax Abatement for Natural Disasters

The Legislature has provided tax relief for property damaged by natural disasters on at least five occasions.⁸ In 1988, the Legislature provided an abatement of taxes for properties damaged by windstorms or tornadoes.⁹ To receive the abatement, the property owner was required to file an application with the property appraiser by March 1 of the year following the year in which the windstorm or tornado occurred.¹⁰ After making a determination on the validity of the application, the property appraiser was directed to issue an official statement to the tax collector containing the number of months the property was uninhabitable due to the damage or destruction, the value of the property prior to the damage or destruction, the total taxes due on the property as reduced by the number of months the property was uninhabitable, and the amount of the reduction in taxes.¹¹

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 Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4.

⁸ Chapters 88-101, 98-185, 2004-474, 2007-106, and 2018-118, Laws of Fla.

⁹ Section 196.295(3), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

¹⁰ Section 196.295(3)(a), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

¹¹ Section 196.295(3)(d), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

Upon receipt of the official statement, the tax collector reduced the amount of taxes due on the property on the tax collection roll and informed the board of county commissioners and the Department of Revenue (DOR) of the total reduction in taxes for all property in the county receiving the abatement.¹² The law was applied retroactively to January 1, 1988, and included a repeal effective July 1, 1989.¹³ The language was removed from statute in 1992.¹⁴

Most recently, the Legislature applied a similar process to abate taxes for homestead parcels damaged or destroyed by Hurricanes Hermine and Matthew in 2016 or Hurricane Irma in 2017. If the residential improvement was rendered uninhabitable for at least 30 days due to such a hurricane, taxes initially levied in 2019 could be abated.¹⁵ The Legislature was required to appropriate funds to fiscally constrained counties to offset the reduction in ad valorem tax revenue resulting from the abatement.¹⁶

The Value Adjustment Board Process

Each county has a Value Adjustment Board (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.¹⁷ The county clerk acts as the clerk of the VAB.¹⁸ A property owner may initiate an assessment valuation challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.¹⁹

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.²⁰ The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.²¹ 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.²² The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.²³

Champlain Towers South

On the morning of June 24, 2021, a 12-story condominium in Surfside, Florida unexpectedly experienced structural failure and partially collapsed, resulting in the death of ninety-eight

¹² Section 196.295(3)(e)-(f), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

¹³ Section 196.295(3)(h), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

¹⁴ Chapter 92-173, s. 8, Laws of Fla.

¹⁵ Chapter 2018-118, s. 17, Laws of Fla. enacting s. 197.318, F.S.

¹⁶ Section 218.135, F.S., (2018) (Repealed 2019).

¹⁷ Section 194.015, F.S.

¹⁸ *Id.*

¹⁹ Section 194.011(3)(d), F.S. With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser.

²⁰ Section 194.035, F.S.

²¹ Section 194.034(2), F.S.

²² *Id.*

²³ *Id.*

people. The standing portion of the building, rendered uninhabitable, was demolished 10 days later.

Alongside an extensive emergency management effort, the Governor issued Executive Order 21-160 to suspend deadlines related to property tax administration for taxpayers whose property was destroyed or rendered uninhabitable by the collapse.²⁴ The suspensions include deadlines regarding the notification and collection of ad valorem taxes. The executive order also requested “the Florida Legislature to explore additional legislative acts as may be necessary to alleviate the taxpayers’ property tax obligations.”²⁵

III. Effect of Proposed Changes:

The bill creates s. 197.319, F.S., to provide tax relief to property owners affected by a sudden and unforeseen collapse of a residential building in 2021. The bill requires the tax collector to abate the property tax associated with the value of the residential building that collapsed, and it requires the DOR to issue refunds to property owners for any remaining amount of tax levied.

The following terms are defined by the bill:

- “Destruction” means the immediate demolition of a building caused by a sudden and unforeseen collapse and the subsequent demolition of remaining sections of the building recognized as having experienced a major structural collapse by an executive order issued by the Governor pursuant to s. 252.36.
- “Disaster relief credit” means the product arrived at by multiplying the percent change in value by the amount of timely paid taxes levied in the year in which the destruction occurred.
- “Percent change in value” means the difference between a residential parcel’s just value as of January 1 of the year in which the destruction occurred and its postdisaster just value expressed as a percentage of the parcel’s just value as of January 1 of the year in which the destruction occurred.
- “Postdisaster just value” means the just value of the residential parcel on January 1 of the year in which the destruction occurred, reduced to reflect the just value of the residential improvement as a result of the destruction. For purposes of this section, residential improvements that are uninhabitable shall have no value placed thereon. Postdisaster just value is determined only for purposes of calculating tax abatements under this section and does not determine a parcel’s just value as of January 1 each year.
- “Property owner” means the person who on the date of destruction holds legal title to the real property.
- “Residential improvement” means a multistory residential building comprised of at least 50 dwelling units.

Affected property owners must file an application with the property appraiser, verified under oath, by May 1, 2022. Failure to file by that date waives a property owner’s claim for relief.

²⁴ Executive Order 21-160, Office of the Governor, Jul. 9, 2021, available at: <https://www.flgov.com/wp-content/uploads/2021/07/EO-21-160.pdf> (last visited January 20, 2022).

²⁵ *Id.*, s.2.

The property appraiser must investigate the statements contained in the application to determine if the applicant is entitled to an abatement of taxes. If the property appraiser determines that the applicant is not entitled to an abatement, the applicant may file a petition with the VAB requesting such abatement. If the property appraiser determines that the applicant is entitled to an abatement, the property appraiser must issue an official written statement to the tax collector by June 1, 2022, providing the property's just value as of January 1, 2021, the just value following the destruction of the parcel, and the percent change in value.

Upon receipt of the statement, the tax collector must calculate the disaster relief credit.

By July 1, 2022, the tax collector must notify the DOR of the total reduction in taxes for all qualifying properties and remaining amount of taxes levied for each parcel. This notification must include the name and address of each applicant. The tax collector must also notify the governing board of each affected local government of the reduction in such government's taxes caused by this bill.

Upon notification from the tax collector, the DOR must process a payment from its Administrative Trust Fund to each property owner for the amount of taxes levied and not reduced by the tax collector, and forward all undeliverable reimbursements to the notifying tax collector for subsequent delivery attempts.

The abatement provisions apply retroactively to January 1, 2021.

The bill also amends s. 194.032, F.S., to allow the VAB to hear appeals from property owners denied this relief.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 (b) of the Florida Constitution provides that except upon approval of each house of the Legislature by 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 requirement does not apply to laws having an insignificant impact,^{26, 27} which for Fiscal Year 2022-2023, is forecast at \$2.3 million.²⁸

²⁶ FLA. CONST. art. VII, s. 18(d).

²⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$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 Jan. 26, 2022).

²⁸ Based on the Demographic Estimating Conference's population estimates adopted on March 3, 2021. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/210303demographic.pdf> (last visited Jan. 26, 2022).

The Revenue Estimating Conference has not analyzed this bill; however, the reduction in property tax receipts is not expected to surpass \$2.3 million. Therefore, this bill is not a mandate subject to the provisions of Article VII, section of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise a state tax or fee. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

A general law operates universally throughout the state, uniformly on specific subjects throughout the state uniformly within a permissible classification, or relates to a state function or entity.²⁹ Uniform operation of a general law does not require application throughout the state; instead there must be a reasonable possibility that others in the future may meet the criteria of the classification.³⁰ A general law of local application is a form of general law that operates within only a portion of the state due to a valid classification based on proper distinctions and differences.³¹ Article III, Section 10 of the Florida Constitution does not place any burdens or requirements on the Legislature's ability to pass a general law of local application.

A special law is a law that operates on a specific category of people or subjects, and the classification is impermissible or illegal.³² A special law requires prior publication of a notice of intent to seek passage, or it may become effective after approval by the affected voters in a referendum.³³ A local law is a form of special law that operates only in a specific geographic area or in a classified territory when classification is impermissible or illegal.³⁴

The bill applies narrowly to abate the 2021 taxes of those property owners who held legal title to a parcel within a multistory residential building of at least 50 dwellings which was demolished by a sudden and unforeseen collapse as recognized by an executive order

²⁹ State Affairs Committee and Local Administration and Veterans Affairs Subcommittee, *Local Bills Policies and Procedures Manual 2020-2022*, 1, available at: <https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Bill+Policy+and+Procedures+Manual.pdf>.

³⁰ *Id.* at 1-2.

³¹ *Id.* at 2.

³² *Id.* at 2-3.

³³ *Id.* at 3.

³⁴ *Id.*

issued by the Governor during the 2021 calendar year, which appears to be a closed classification.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet reviewed this bill.

B. Private Sector Impact:

Property owners who apply for and receive the tax abatement authorized by the bill will benefit by a reduced tax burden.

C. Government Sector Impact:

The DOR will experience an undetermined reduction to its Administrative Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 194.032 of the Florida Statutes.

This bill creates section 197.319 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.