

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 Judiciary Affairs Committee

BILL: SB 1006

INTRODUCER: Senators Fasano and Lynn

SUBJECT: Ad Valorem Assessments/Challenges

DATE: March 24, 2009

REVISED: 03/25/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Sumner</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>WPSC</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill revises the burden of proof in a challenge to an assessment by providing that, in going forward with an administrative or judicial action, the property appraiser bears the burden of proving that the assessment was arrived at under specified conditions. If the burden of proof is met, the property appraiser’s assessment is presumed correct.

The bill revises the taxpayer burden of proof in cases where the appraiser is presumed correct by providing that the taxpayer must prove by a preponderance of the evidence, rather than clear and convincing evidence, that the assessment exceeds just value or was erroneously calculated. In an action where the property appraiser challenges a value adjustment board’s determination of value, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the value adjustment board is less than just value.

The bill provides that the property appraiser’s assessment does not have a presumption of correctness in administrative or judicial actions where a denial of an exemption or assessment classification is challenged. The taxpayer must prove entitlement to the exemption or classification by a preponderance of the evidence.

The bill expresses the Legislature’s intent that a taxpayer shall never have the burden of proving that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment, and reaffirms that the Legislature expressly rejected the “every-reasonable-hypothesis” standard in 1997 by creating a lower burden of proof. The bill expresses the

Legislature's intent to reject that any cases published since 1997 citing the "every-reasonable-hypothesis" are interpretive of legislative intent.¹

Finally, the bill expresses the Legislature's intent that the provisions establishing the burden of proof and loss of presumption of correctness in actions challenging a denial of an exemption or assessment classification are to apply retroactively and are intended to clarify existing law, as are the provisions rejecting the "every-reasonable-hypothesis" standard.

This bill substantially amends section 194.301, Florida Statutes, and creates two undesignated sections of law.

II. Present Situation:

Property Assessments at Just Value

Section 4, Art. VII, State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.²

Section 193.011, F.S., provides the eight factors the property appraiser must use when arriving at just value:

- The present cash value of the property, which is what a willing buyer would pay a willing seller, exclusive of reasonable fees and costs of purchase, in an arm's length transaction.
- The highest and best use to which the property can be expected to be put in the immediate future (taking into consideration specified factors).
- The location of the property.
- The quantity or size of the property.
- The cost and the present replacement value of any improvements on the property.
- The condition of the property.
- The income from the property.
- The net proceeds of the sale of the property after deduction of reasonable fees and costs.

The method of valuation and the weight assigned to each of the eight factors is at the property appraiser's discretion. The assessment will not be disturbed on review so long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.³

¹ Established in *Folsom v. Bank of Greenwood*, 120 So. 317, 318 (Fla. 1929), where the Florida Supreme Court upheld the trial court's invalidation of an assessment for the property appraiser's failure to also assess similar property of other businesses but noted that "[t]he prima facie correctness of an assessment when made by the proper officers must be affirmatively overcome by appropriate and sufficient allegations and proofs excluding every reasonable hypothesis of a legal assessment."

² *Walter v. Schuler*, 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 *Blake v. Xerox Corp.*, 447 So. 2d 1348, 1351 (Fla. 1984), reviewed on the jurisdictional ground of conflict of decisions, where the Florida Supreme Court held that the issue at matter was not the method of determining market value. Rather, the only question was "whether the appraiser considered all factors mandated by the law and whether his methods and

Assessment's Presumption of Correctness

Section 194.301, F.S., provides that, in any administrative or judicial action brought by a taxpayer, the property appraiser's assessment is presumed correct. If the taxpayer can show by a preponderance of the evidence that the property appraiser has failed to properly consider the criteria in s. 193.011, F.S., or that the property appraiser's assessment is arbitrarily based on appraisal practices different than those generally applied to similar properties within the same class and county, the property appraiser's presumption of correctness is lost.

If the presumption is lost, the taxpayer has the burden of proving by a preponderance of the evidence that the assessment is in excess of just value. If the presumption of correctness is retained, the taxpayer has the burden of proving by clear and convincing evidence that the assessment is in excess of just value. If the property appraiser is determined to be in error, the Value Adjustment Board (VAB) or the court can establish the assessment if there exists competent, substantial evidence in the record which cumulatively meets the requirement factors for determining just value under s. 193.011, F.S. If the record lacks the appropriate evidence, the matter is remanded by the VAB or the court with appropriate directions to the property appraiser.

Burden of Proof and Standard of Review

The obligation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established, and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.⁴

Preponderance of Evidence

Preponderance of the evidence is defined as the "greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force."⁵

Clear and Convincing Evidence

Clear and convincing evidence is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain." It is a greater burden than preponderance of the evidence, but it is less than reasonable doubt, which is the standard in criminal proceedings.⁶

conclusions are supported by any reasonable hypothesis of a legal assessment." The Court noted that the trial court "judgment should have been affirmed [by the Third District Court of Appeal] simply on the ground that the property appraiser's determination, having been lawfully arrived at and being supported by a reasonable hypothesis of correctness, was properly upheld."

⁴ 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).

⁵ BLACK'S LAW DICTIONARY (8th ed. 2004).

⁶ BLACK'S LAW DICTIONARY (8th ed. 2004).

III. Effect of Proposed Changes:

The bill revises the burden of proof in an administrative or judicial proceedings when challenging an ad valorem tax assessment of value. It places the burden on the property appraiser of proving that the assessment was arrived at by complying with the just valuation standards in s. 193.011, F.S., and professionally accepted appraisal practices. It gives the taxpayer the burden of proving by a preponderance of the evidence that the assessment exceeds the just value or is not based upon appraisal practices that are different from the appraisal practices generally applied to comparable property within the same class. It provides that if the property appraiser challenges the value adjustment board's determination of value, the property appraiser must prove by a preponderance of the evidence that the assessment established by the value adjustment board is less than just value.

The bill provides that when an exemption or assessment classification is challenged, the denial of the property appraiser does not have the presumption of correctness. It gives the taxpayer the burden of proving entitlement to an exemption or assessment classification by a preponderance of the evidence.

The bill expresses the Legislature's intent that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment and the bill reaffirms that the Legislature expressly rejected the "every-reasonable-hypothesis" standard in 1997 by creating a lower burden of proof. The bill expresses the Legislature's intent to reject that any cases published since 1997 citing the "every-reasonable-hypothesis" are interpretive of legislative intent.

Finally, the bill expresses the Legislature's intent that the provisions establishing the burden of proof and loss of presumption of correctness in actions challenging a denial of an exemption or assessment classification are to apply retroactively and are intended to clarify existing law, as are the provisions rejecting the "every-reasonable-hypothesis" standard.

Below is a section-by-section analysis of the bill.

Section 1. Amends s. 194.301, F.S., to create new provisions governing the presumption of correctness and burden of proof in challenges to ad valorem tax value assessments.

- In any administrative or judicial action in which a taxpayer challenges an ad valorem assessment of value, the property appraiser has the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the property appraiser meets the burden of proof, the assessment is presumed correct.
- In any administrative or judicial action in which a taxpayer challenges an ad valorem assessment of value, the taxpayer has the burden of proving by a preponderance of the evidence that the assessment of value exceed just value, or that the assessment is based on appraisal practices different from those generally applied to comparable property within the same class.

- In any judicial action in which the property appraiser challenges the Value Adjustment Board's (VAB) determination of value, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.
 - If the property appraiser's assessment is determined to be in error, the VAB or the court can establish the assessment if competent, substantial evidence exists in the record which cumulatively meets the requirements of s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
 - The burdens of proof being created apply only to the challenge of an assessment that is revised and after the revised assessment is remanded to the property appraiser by a VAB or court.

Section 2. Creates an undesignated section of law to express the Legislature's intent that:

- A taxpayer never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment.
- All cases establishing the "every-reasonable-hypothesis" standard were expressly rejected by the Legislature when it adopted chapter 97-85, Laws of Florida,⁷ to create a lower burden of proof.
- Any cases published since 1997 citing the "every-reasonable-hypothesis" are expressly rejected to the extent that they are interpretive of legislative intent.

Section 3. Creates an undesignated section of law to express the Legislature's intent that the provisions establishing the burden of proof and loss of presumption of correctness in actions challenging a denial of an exemption or assessment classification are to apply retroactively and are intended to clarify existing law, as are the provisions rejecting the "every-reasonable-hypothesis" standard.

Section 4. Provides that the act shall take effect upon becoming a law and first apply to assessments in 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that, except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this bill does not qualify for one of the exceptions or exemptions provided in s. 18, Art. VII, State Constitution, and it is possible that taxpayers could more successfully challenge assessments, the bill does fall under the mandate provisions of s. 18, Art. VII,

⁷ Enacted by the 1997 Legislature to create s. 194.301, F.S., Presumption of Correctness.

State Constitution, and will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that taxpayers are more successful in challenging assessments and denials of exemptions and use classifications, taxpayers will pay lower ad valorem taxes.

B. Private Sector Impact:

Taxpayers will have a lower burden of proof in challenging assessments and denial of exemptions and use classifications.

C. Government Sector Impact:

Local Government

The bill provides that the burden of proof is placed on the property appraiser in going forward with a taxpayer challenge to an assessment. The property appraiser must prove that the assessment or the denial of an exemption or classification complies with the law and with appraisal practices.

The fiscal impact to local governments from the retroactive application of certain provisions in the bill is indeterminate at this time.⁸

The Revenue Estimating Conference estimated the impact on local government tax revenues at \$157 million in FY 2009-2010, increasing to \$565 million by FY 2012-2013.

State Government

In the agency bill analysis, the Department of Revenue noted that the bill would have an operational impact on the department's studies and in-depth reviews because

⁸ See *State Farm v Laforet*, 658 So.2d 55, 61 (Fla. 1995) where the Supreme Court held that a specified section of statute could only be applied prospectively but noted that "the general rule is that substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but that a procedural or remedial statute is to operate retrospectively (citing *Arrow Air, Inc. v Walsh*, 645 So.2d 422 (Fla. 1994)). Even when the Legislature does expressly state that a statute is to have retroactive application, this Court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties (citing *Alamo Rent-a-Car, Inc. v Mancusi*, 632 So.2d 1352 (Fla. 1994))."

s. 195.096(2)(d), F.S., provides that in “the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere.” Considerable additional resources would be required for the department to comply with the Uniform Standards of Professional Appraisal Practice in conducting in-depth reviews.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Part II of ch. 475, F.S., regulates real estate appraisers. Each appraiser registered, licensed, or certified under this part is required to comply with the Uniform Standards of Professional Appraisal Practice. (*See* s. 475.628, F.S.) However, the Attorney General has opined that, based on an exemption prescribed in s. 475.612(6), F.S., local property appraiser employees are not subject to the requirements of part II of ch. 475, F.S., even if the employee is, in fact, registered and includes his designation and number on the appraisal. The bill provides that the property appraiser has the burden of proving that the assessment of a parcel was arrived at, in part, by using professional accepted appraisal standards. In this respect, the bill appears to subject the property appraisers to the provisions of the Uniform Standards of Professional Appraisal Practice in part II of ch. 475, F.S., even if they are not certified, licensed, or registered under that part.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.