

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1115 Value Adjustment Boards

**SPONSOR(S):** Wood

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	11 Y, 7 N, As CS	Wolfgang	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

### SUMMARY ANALYSIS

The committee substitute expands the property taxpayer bill of rights.

The committee substitute increases the Department of Revenue's property tax oversight responsibilities with respect to the value adjustment board proceedings by requiring the department to enact rules addressing a number of aspects of the value adjustment board process aimed at improving consistency, transparency and fairness.

The committee substitute specifies that the value adjustment board attorney is to use the Department of Revenue manual and receive Department of Revenue training relating to the value adjustment board process.

The committee substitute revises the value adjustment board procedures to specify that the board must meet the following requirements:

- Findings of fact must be based on admitted evidence or a lack thereof and transparently state how the information and methodology the property appraiser used in developing the assessment comply with relevant statutory criteria.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.
- Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

The committee substitute states that it applies to tax years beginning on or after January 1, 2015.

The effective date of the committee substitute is July 1, 2014.

Revenues and costs of local governments may be impacted by the bill, depending on rules developed by the Department of Revenue as directed by the bill.

**This bill may be a county or municipal mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

The Florida Constitution reserves ad valorem taxation (i.e., property taxes) for local governments and it is their largest source of funding.<sup>1</sup> Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.<sup>2</sup> Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.<sup>3</sup>

Article VII, s. 4 of the Florida Constitution states that “[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation...”<sup>4</sup> In arriving at just valuation as required under Art. VII, s. 4 of the Florida Constitution, the property appraiser takes into consideration the following factors:

1. The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm’s length;
2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the restrictions on the property;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of any improvements thereon;
6. The condition of the property;
7. The income from the property; and
8. The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.<sup>5</sup>

In 1965, the Supreme Court in *Walter v. Shuler* made its oft quoted statement that just valuation is legally synonymous with market value and that it “may be established by the classic formula that it is the amount ‘a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.’”<sup>6</sup>

The statutory definition of “assessed value of property” means:

- The just or fair market value of an item or property;
- The value of property as limited by Art. VII of the State Constitution; or

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<sup>1</sup> Article VII, ss. 1(a) and (9), Florida Constitution

<sup>2</sup> Article VII, s. 9, Fla. Const.

<sup>3</sup> Section 197.383, F.S.

<sup>4</sup> Article VII, s. 4, Fla. Const. and Article IX, s. 1 Fla. Const. of 1885 (“The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property...”).

<sup>5</sup> Section 193.011, F.S

<sup>6</sup> 176 So. 2d 81, 86 (Fla. 1965 ); see also *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Holly Ridge Ltd. Partnership v. Pritchett*, 936 So. 2d 694 (Fla. 5th DCA 2006).

- The value of property in a classified use or at a fractional value if the property is assessed solely on the basis of character or use or at a specified percentage of its value under Art. VII of the State Constitution.<sup>7</sup>

### The Ad Valorem Process

The Department of Revenue (DOR or Department) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.<sup>8</sup> Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.<sup>9</sup>

Assessment rolls must be submitted to the DOR on or before July 1.<sup>10</sup> By definition, “complete submission of the rolls” includes, but is not limited to:

- accurate tabular summaries of valuations as prescribed by department rule;
- an electronic copy of the real property assessment roll including for each parcel total value of improvements, land value, the recorded selling prices, other ownership transfer data required for an assessment roll, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by department rule;
- an accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by department rule;
- an electronic copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by department rule; and
- an accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by department rule.<sup>11</sup>

The Department uses Form DR-493, promulgated through rule 12D-8.002(4), F.A.C., to track the adjustments made to fair market value.

There are several steps to the ad valorem tax process. In the first step, county property appraisers establish each property’s just, or market, value as of January 1 of each year and apply any valid exemptions, classifications, or assessment limitations to determine the parcel’s taxable value. Local taxing authorities set a millage rate (i.e., tax rate) that is levied on the property’s taxable value. Each August, county property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable value of the parcel and the tax that will be due based on the millage rates proposed by local governments.<sup>12</sup> Property owners who disagree with the county property appraiser assessment of their property’s valuation or who have been denied an exemption or property classification may:

- Request an informal meeting with the property appraiser;<sup>13</sup>
- Appeal to the county value adjustment board;<sup>14</sup> or
- Challenge the assessment in circuit court.<sup>15</sup>

Property taxes are due November 1 or as soon thereafter as the certified tax roll is received by the tax collector.<sup>16</sup> Pending any appeals, unpaid taxes are delinquent after March 31 of the following year.

### Composition of the Value Adjustment Board

<sup>7</sup> Section 192.001, F.S.

<sup>8</sup> Section 195.002, F.S.

<sup>9</sup> Chapter 195, F.S.

<sup>10</sup> Section 193.1142, F.S.

<sup>11</sup> Section 192.001(18), F.S.

<sup>12</sup> Section 200.069, F.S.

<sup>13</sup> Section 194.011(2), F.S.

<sup>14</sup> Section 194.011(3), F.S.

<sup>15</sup> Section 194.171, F.S.

<sup>16</sup> Section 197.333, F.S.

Section 194.015, F.S., requires that each county have a value adjustment board consisting of five members as follows:

- Two members of the governing body of the county.
- One member of the school board elected by membership of the school board.
- One citizen appointed by the governing body of the county. The citizen must own homestead property within the county.
- One citizen appointed by the school board. This person must own a business occupying commercial space within the school district.

The statute provides that a quorum of three members of the board must include at least:

- One member of the governing body of the county.
- One member of the school board.
- One citizen member.

In addition, s. 194.035, F.S., requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings. Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.<sup>17</sup> Special magistrates must meet the following qualifications:

- A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation.
- A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation.
- A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation.

#### Board Attorney

Section 194.015, F.S., provides in part that the board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present.

#### Written Decisions of the Value Adjustment Board

Section 194.034(2), F.S., provides:

In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

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<sup>17</sup> Section 194.011(5)(a)2., F.S.  
**STORAGE NAME:** h1115a.FTSC  
**DATE:** 3/28/2014

## Value Adjustment Board Procedures and Training

Section 194.011, F.S., provides in part that the Department is required to develop:

- Uniform procedures for hearings before the value adjustment board, and
- A policies and procedures manual for value adjustment boards, special magistrates, and property owners to use in proceedings before the value adjustment board.

In addition, s. 194.035(3), F.S., provides that the Department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the Department's standard measures of value, including the guidelines for real and tangible personal property. A person who has three years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training is open to the public.

## Reviews of Value Adjustment Boards by the Department of Revenue

Section 194.036(1)(c), F.S., relating to appeals of decisions of the value adjustment board provides that the property appraiser may appeal a decision to the circuit court. However, first, the property appraiser must notify the DOR that he or she believes that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions and provide the DOR with certain supporting information. If the DOR finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it informs the property appraiser, who may then bring suit in circuit court against the value adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial proceeding. Effected taxpayers have 60 days from the date of the final judicial decision to file an action to contest any altered or changed assessment.

## Taxpayer Bill of Rights

The Florida Statutes set forth a general taxpayer bill of rights in s. 213.015, F.S., and a property tax specific taxpayer bill of rights in s. 192.0105, F.S. The Florida Taxpayer's Bill of Rights for property taxes and assessments was created to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. These rights are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the DOR. Section 192.0105, F.S., sets forth the taxpayer rights along with cross references to where those rights are effectuated. The rights are categorized as follows: the right to know, the right to due process, the right to redress, and the right to confidentiality.

## **Proposed Changes**

The committee substitute amends s. 193.0105, F.S., the property tax bill of rights, to add the following rights under the heading of "The Right to Due Process:"

- The right to an assessed value of property that conforms with the applicable provisions of the State Constitution and the laws of this state applied consistently in both assessment development by the property appraiser and assessment review by the value adjustment board and the courts of this state (see ss. 192.001, 194.011, and 194.301).
- The right to an administrative review before a special magistrate or other person designated to hear petitions contesting assessments placed on property who has passed an examination demonstrating competency in subjects covered in an annual training developed by the department in an open, public, and transparent process (see ss. 194.011, 194.015, and 194.035).
- The right to an assessment review by a value adjustment board applying the same statutory criteria and appraisal practices lawfully applied by the property appraiser in developing the original assessment (see ss. 194.011 and 194.301).

- The right to be sent a timely written decision by a the value adjustment board containing findings of fact and conclusions of law logically connected to the findings of fact that identifies each statutory criterion applicable to the assessment determination under administrative review and transparently states, based on the admitted evidence, the actions taken by the property appraiser in determining the assessment (see ss. 194.011, 194.034, 194.301, and 194.3015).
- The right to a transparent, fair, and uniform value adjustment board process (see ss. 194.011 and 194.301).

The committee substitute amends existing law, which requires the DOR to create uniform procedures for hearings before the value adjustment board, to require the DOR to prescribe rules with the goal of developing a transparent, fair, and uniform value adjustment board process. The committee substitute expands upon existing law by requiring the DOR to prescribe rules addressing:

- Establishment of assessed value of property that conforms with the applicable provisions of the State Constitution and the laws of this state applied consistently in both review by the property appraiser and assessment review by the value adjustment board.
- Duties and responsibilities of the members of a value adjustment board relating to:
  - The oversight of the clerk of the value adjustment board, special magistrates, and value adjustment board attorneys.
  - The consideration of special magistrate recommendations, value adjustment board attorney recommendations, and appellate decisions rendered by a circuit court.
- Minimum qualifications for special magistrates and value adjustment board attorneys.
- Minimum written contract requirements for special magistrates and value adjustment board attorneys specifying the duties of the position, standards of conduct, and performance standards.
- Minimum requirements for written decisions including check list forms listing each statutory criterion that applies to the assessment determination under administrative review consistent with s. 194.034, 194.301, and other applicable statutes.
- Mandatory training requirements for special magistrates and value adjustment board attorneys consistent with ss. 194.015 and 194.035 and any other training requirements deemed necessary by the department.
- Any rules that the department deems necessary to provide effective oversight of the value adjustment board process and to ensure compliance with all applicable statutes and rules.

The committee substitute states that the DOR uniform policies and procedures manual is to be used by the value adjustment board attorneys.

The committee substitute adds language in s. 194.015, F.S. that the value adjustment board attorney must attend and complete the training provided and conducted by the DOR (already a requirement for special magistrates).

The committee substitute deletes the provision that allows a person with three years of relevant experience to become a special magistrate if they have completed the DOR training.

The committee substitute revises the value adjustment board procedures to specify that the board must meet the following requirements:

- Findings of fact must be based on admitted evidence or a lack thereof and transparently state how the information and methodology the property appraiser used in developing the assessment comply with relevant statutory criteria.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.
- Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

The committee substitute states that it applies to tax years beginning on or after January 1, 2015.

The effective date of the committee substitute is July 1, 2014.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 192.0105, F.S., to add rights to the property tax bill of rights.

Section 2: Amends 194.011, F.S., to requires the DOR to adopt rules governing various aspects of the value adjustment board process.

Section 3: Amends s. 194.015, F.S., to provide for training requirements for the counsel to the value adjustment board.

Section 4: Amends s. 194.035, F.S., to delete the provision that allows a person with three years of relevant experience to become a special magistrate if they have completed the DOR training.

Section 7: States that the bill applies to tax years beginning on or after January 1, 2015.

Section 8: Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

This committee substitute would require the DOR to promulgate rules, including forms, to govern the administration of VAB hearings and the training and qualifications for certain VAB personnel. The cost of development of these rules is indeterminate at this time.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has not reviewed this bill for a fiscal impact. The bill requires DOR to make rules establishing consistent review and assessment of property. If the rules result in different assessments on property, there will be a fiscal impact on local governments.

2. Expenditures:

Local VABs, special magistrates, and VAB attorneys would need to comply with the requirements of DOR rules, including adhering to training requirements and contract provisions promulgated by the DOR. The cost, if any, is indeterminate at this time because these rules have not been developed. The committee substitute places additional requirements on what is required to be included in the decision of the VAB, and eliminates the ability of local governments to appoint special magistrates with only three years of relevant experience and DOR training. These changes may cost local governments an indeterminate amount.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(a) of the Florida Constitution states that any general law that requires local governments to spend funds must fulfill an important state interest and be passed by a two-thirds vote of the membership of each house of the Legislature. The bill may or may not require local governments to spend funds. Any required expenditures are unknown and depend on the rules promulgated by the DOR. Therefore, it is uncertain whether this bill is a mandate.

Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature. The bill may or may not have a negative impact on local government revenue raising authority. Therefore, it is uncertain whether this bill is a mandate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the DOR with rulemaking authority for the value adjustment board process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2014, the Finance & Tax Subcommittee adopted an amendment to this bill. The amendment deleted the definitions of just value and fair market value. The amendment deleted the changes to the evidence exchange portion of the value adjustment board process. The amendment revises the language adds guidance to the DOR in creating rules and revises language for VABs to make findings of fact. This analysis reflects those changes.