

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 972

INTRODUCER: Senator Flores

SUBJECT: Value Adjustment Boards

DATE: March 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 972 makes several changes to value adjustment board (VAB) proceedings. The bill:

- Requires a petition to the VAB to be signed by the taxpayer, or be accompanied by the taxpayer's written authorization for representation, which is only valid for one tax year.
- Limits representation of taxpayers before the VAB to certain professionals.
- Requires the property appraiser to notify the petitioner when the property record card is available online.
- Limits a petitioner's to reschedule a hearing to a single instance and for good cause only.
- Changes the rate of interest for overpayments and underpayments from 12 percent to the prime rate.
- Allows district school boards and district county commissions to audit VAB expenses.
- Requires all VAB petitions to be resolved by the June 1 following the assessment year.
- Establishes an enhanced review process by which the Department of Revenue may conduct a review of VAB proceedings for counties that receive 10,000 or more petitions in any one tax year.

The Revenue Estimating Conference has determined that this bill will have an indeterminate impact on local government revenues.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Overview of the Ad Valorem Process

In Florida, ad valorem taxation is reserved to local governments.<sup>1</sup> The process for levying and providing administrative review of the ad valorem tax generally involves the property appraiser, tax collector, VAB, and local taxing authorities.

Property appraisers establish each property's just value<sup>2</sup> as of January 1 of each year and apply applicable exemptions, classifications, or assessment limitations to determine the property'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, property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable values of the property and the tax that will be due based on the millage rates proposed by local governments.<sup>3</sup>

Property owners who disagree with the property appraiser's assessment of the property or the denial of an exemption or property classification may:

- Request an informal meeting with the property appraiser;<sup>4</sup>
- Appeal to the county VAB;<sup>5</sup> or
- Challenge the assessment in circuit court.<sup>6</sup>

Petitions to the VAB are due by mid-September and hearings begin in October. Taxes become payable on November 1. In many counties, the VAB cannot complete its hearings before November 1. In this situation, the Board of County Commissioners will instruct the tax collector to begin issuing tax notices based on the initial tax roll, but the board will also extend the roll for completion of VAB proceedings. As part of extending the roll, the board will require the VAB to certify the portion of the roll that it has completed.<sup>7</sup>

Within 20 working days of receiving the certified tax roll, tax collectors send each taxpayer a tax notice.<sup>8</sup> Property taxes generally are due November 1 and are delinquent on April 1 of the following year.<sup>9</sup> Tax collectors collect all ad valorem taxes levied by the county, school district,

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<sup>1</sup> FLA. CONST. art. VII, s. 1(a) (stating that no state ad valorem taxes shall be levied upon real estate or tangible personal property).

<sup>2</sup> In arriving at just valuation, the county property appraiser takes into consideration the eight factors enumerated in s. 193.011, F.S. In 1965, the Supreme Court in *Walter v. Shuler* made the 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.'" 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).

<sup>3</sup> Section 200.069, F.S.

<sup>4</sup> Section 194.011(2), F.S.

<sup>5</sup> Section 194.011(3), F.S.

<sup>6</sup> Section 194.171, F.S.

<sup>7</sup> See ss. 193.122(1) and 197.323, F.S.

<sup>8</sup> Section 197.322, F.S.

<sup>9</sup> Section 197.333, F.S.

municipalities, and any special taxing districts within the county, and then distribute the taxes to each taxing authority.<sup>10</sup>

Taxpayers with unresolved petitions remaining before the VAB on April 1 must pay at least 75 percent of the initial ad valorem tax assessment by April 1.<sup>11</sup> Once the VAB has completed its review of all petitions – oftentimes months later – the VAB will issue its second, or “final,” certification of the VAB’s changes to the roll.<sup>12</sup> In a few large counties, the VAB can take in excess of one year to complete its review of all petitions and issue its final certification. Tax collectors will collect and distribute any additional taxes received as a result of final VAB decisions.

### **Value Adjustment Boards**

Chapter 194, F.S., provides for administrative and judicial review of tax assessments. Each county in Florida has a VAB composed of five members<sup>13</sup> that reviews appeals of the ad valorem tax decisions made by property appraisers.<sup>14</sup> A property owner may petition the VAB to review the property appraiser’s assessment of real or tangible personal property or the denial of an exemption or classification.

Counties with a population greater than 75,000 are required to hire special magistrates to conduct valuation hearings. Before conducting hearings, the VAB must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.<sup>15</sup>

The VAB must appoint private counsel who has practiced law for over five years and who shall receive such compensation as may be established by the VAB.<sup>16</sup> 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.

### **Petition Process for VAB Hearing**

A petitioner initiates a review of a property assessment by filing a petition in the VAB. Each petition may be subject to a filing fee, up to \$15.<sup>17</sup> Generally, anyone may represent the property owner before a VAB. Value adjustment board petitions may be found at the DOR website,<sup>18</sup> the County Property Appraiser’s office, and in most counties at the office or website of the VAB Clerk. The clerk of the VAB<sup>19</sup> is responsible for receiving completed petitions, acknowledging

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<sup>10</sup> Section 197.383, F.S.

<sup>11</sup> Section 194.014, F.S.

<sup>12</sup> Section 193.122, F.S.

<sup>13</sup> Section 194.015, F.S.

<sup>14</sup> Section 194.011, F.S.

<sup>15</sup> Section 194.011(5)(a)2., F.S.

<sup>16</sup> Section 194.015, F.S.

<sup>17</sup> Section 194.013, F.S.

<sup>18</sup> See Rule 12D-9.015, F.A.C.; Dep’t of Revenue, *Value Adjustment Board Forms and Calendar*, <http://dor.myflorida.com/dor/property/forms/index.html#11> (last visited Mar. 25, 2015) (See Form DR-486).

<sup>19</sup> The county clerk usually serves as the clerk of the VAB. Section 194.015, F.S.

receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the VAB.

### **Property Record Cards**

Prior to the hearing, an exchange of evidence can take place between the petitioner and the property appraiser, if so requested in writing. Regardless of whether petitioners initiate an evidence exchange, the property appraiser is required to provide the property record card<sup>20</sup> to petitioners on receipt of the petition, unless the property record card is available online from the property appraiser.<sup>21</sup>

Property appraisers maintain records of assessment information for assessed properties. A property's record of information is often referred to as the "property record card." On a petition to the VAB, a petitioner may elect to receive a copy of the property record card. Prior to 2013, the clerk of the VAB was required to provide a copy of the card when the petitioner made the election on the petition. Section 8, ch. 2013-109, Laws of Florida, shifted this responsibility from the clerk of the VAB to the property appraiser.

### **Interest**

If a petition to the VAB is still pending when the taxes become delinquent on April 1, the petitioner is required to pay 75 percent of the ad valorem taxes due.<sup>22</sup> Overpayments and underpayments accrue interest at the rate of 12 percent per year.<sup>23</sup> If the VAB determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until the unpaid amount is paid. If the VAB determines that a refund is due, the overpaid amount similarly accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued.

### **Department of Revenue Oversight**

The DOR 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>24</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>25</sup>

Assessment rolls must be submitted to the DOR on or before July 1.<sup>26</sup> By definition, "complete submission of the rolls" includes, but is not limited to:

- Accurate tabular summaries of valuations as prescribed by DOR rule;

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<sup>20</sup> A property record card contains relevant information used in computing the petitioner's current assessment.

<sup>21</sup> Section 194.032(2)(a), F.S.; see Chapter 2013-109, s. 8, Laws of Fla. (SB 556).

<sup>22</sup> Section 194.014(1)(a), F.S.

<sup>23</sup> Section 194.014(2), F.S.

<sup>24</sup> Section 195.002, F.S.

<sup>25</sup> Chapter 195, F.S.

<sup>26</sup> Section 193.1142, F.S.

- 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 DOR 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 DOR 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 DOR 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 DOR rule.<sup>27</sup>

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

Section 194.011, F.S., provides in part that the DOR 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 DOR 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 emphasizes the DOR 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 DOR may be appointed as a special magistrate. The training is open to the public.

### **Recommendations Concerning the VAB Process**

In a December 2010 report,<sup>28</sup> the Office of Program Policy Analysis and Government Accountability found that counties and other participants in the VAB process were likely incurring increased costs, and the time county boards take to complete the process varies, but has increased in recent years due to factors such as:

- Growing numbers of petitions,
- Recent changes in state law and administrative rules, and
- Involvement of property tax representatives.

The Office of Program Policy Analysis and Government Accountability recommended that “if the Legislature wishes to make additional changes to the VAB process, it could consider options to (1) shorten the process; (2) address costs and other fiscal implications; and (3) increase accountability.”

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<sup>27</sup> Section 192.001(18), F.S.

<sup>28</sup> The Florida Legislature Office of Program Policy Analysis and Government Accountability, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

In its March 2015 internal audit report,<sup>29</sup> the Miami-Dade County Public Schools Office of Management and Compliance Audits makes 11 recommendations concerning the VAB process. The audit explains that delays to the final certification of the county's tax roll negatively and significantly affect the school district's ability to fund its operations. The Miami-Dade audit notes that the number of days between the first and last hearing date by the VAB was 802 days in tax year 2009, 535 days in tax year 2010, 492 days in tax year 2011, and 519 days in tax year 2012. Having such a lag in reporting the final tax roll to DOR restricts the school district's revenue, and may affect its ability to receive full funding in the appropriations bill in the year appropriated by the Florida Legislature. The audit found:

- Inconsistencies between rules and statute, particularly as it pertains to DOR rules on rescheduling hearings;
- Lack of compliance with statutes and rules, such as petitions presented by unlicensed agents without signed or written authorization from the taxpayer; and
- Internal control weakness, with one example being no limitation placed on the incentive to overpay and collect interest at 12 percent annual percentage rate.

### **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.

### **III. Effect of Proposed Changes:**

**Sections 1 and 7** amend s. 194.034, F.S., to limit the professionals that are authorized to represent petitioners before VABs to include: a corporate representative of the taxpayer, an attorney, a licensed property appraiser, a licensed realtor, a certified public accountant, or a certified tax specialist retained by the taxpayer, and makes conforming changes to s. 192.0105, F.S., the Taxpayer Bill of Rights.

**Section 2** amends s. 193.122, F.S., to provide that a VAB must complete its second certification of the assessment roll by June 1 following the tax roll year.

**Section 3** amends s. 194.011, F.S., to require that petitions be signed by the taxpayer or be accompanied by the taxpayer's written authorization for representation. A new written authorization for representation is required yearly, as it is only valid for one tax year.

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<sup>29</sup> Miami-Dade County Public Schools Office of Management and Compliance Audits, *Audit of the Miami-Dade County Value Adjustment Board (VAB) Appeals Process – Phase 1* (March 2015).

**Section 4** amends s. 194.014, F.S., to change the interest rate on overpayments and underpayments from 12 percent to the prime rate as published in the Wall Street Journal on July 1 of the tax roll year.

**Section 5** amends s. 194.015, F.S., to allow district school boards and district county commissions to audit expenses related to the VAB process.

**Section 6** amends s. 194.032, F.S., to:

- Require the property appraiser to notify a petitioner when property record cards are available online.
- Allow a petitioner to reschedule a hearing only one time, and only for good cause.
- Require the VAB to hear all petitions, complaints, appeals, and disputes, and submit the certified assessment roll to the property appraiser by June 1, unless the board of county commissioners extends the assessment roll.

**Section 8** creates s. 194.038, F.S., authorizing the DOR to conduct a review of VAB proceedings for counties that receive 10,000 or more petitions objecting to assessments under s. 194.011, F.S., in any one tax year.<sup>30</sup> If DOR conducts a review, it has 9 months to do so from the time that it receives notification. The review would involve:

- A determination of whether the values derived by the board comply with s. 193.011, F.S., and professionally accepted appraisal practices. The county must submit a verbatim copy of proceedings.
- A statistical sampling of petitions that requested a change in the assessment for each classification of property set forth in s. 194.037(2), F.S.
- Adherence, by the DOR, to all standards that VABs are required to adhere.<sup>31</sup>
- Cooperation between the DOR and the VAB in conducting the review, such that each makes available all matters and records bearing on the review. The VAB must provide data requested by the DOR, including documentary evidence presented during the proceedings and written decisions rendered.

The DOR must publish results of its review online and notify relevant governmental entities. Publication on the DOR website would include the following for each parcel:

- Owner's name.
- Property address.
- Identification number of the property as used by the VAB clerk.
- Name of the special magistrate who heard the petition.
- Initial just value derived by the property appraiser.
- Any change to just value made by the VAB.

A property appraiser may currently bring suit in circuit court against the VAB for injunctive relief when DOR finds that a "consistent and continuous violation of the intent of the law or administrative rules by the board" has occurred,<sup>32</sup> the review process contemplated by this section of the bill would also provide a definition of a "continuous" violation. A VAB is in

<sup>30</sup> Based on petition count reports, only Miami-Dade and Broward have exceeded 10,000 petitions in the last three years.

<sup>31</sup> The VABs must follow requirements in Chapter 194, F.S., and Chapter 12D-9, F.A.C.

<sup>32</sup> Section 194.036(1)(c), F.S.

continuous violation of the intent of the law if DOR determines that less than 90 percent of the petitions randomly sampled comply with the criteria in s. 193.011, F.S., and professionally accepted appraisal practices.

The bill provides the DOR with rule-making authority to administer the reviews described in this section.

**Section 9** conforms provisions in s. 195.002, F.S., related to DOR's supervisory role, to include the "administrative review of value adjustment boards."

**Section 10** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues**

The Florida Supreme Court has interpreted the separation of powers requirement found in Article II, section 3 of the Florida Constitution, as having two facets: first, that "no branch of government may encroach on another branch's power," and second, that no branch may delegate its constitutionally assigned powers to another branch.

The second of these prohibitions is known as the nondelegation doctrine. While the Legislature may transfer subordinate functions to executive branch agencies without violating the nondelegation doctrine, it may not transfer the power to enact a law or the right to exercise unrestricted discretion in applying the law. Furthermore, the Legislature may not delegate its authority "absent ascertainable minimal standards and guidelines."

Section 8 of the bill affords DOR the discretion to initiate reviews, and also provides DOR a general grant of rulemaking power. It is unclear what will trigger DOR's review of the VAB, or guidelines for how they should implement a rule regarding whether to begin the review process. Lines 258-259, simply state that: "the DOR may conduct a review of the value adjustment board proceedings." It is unclear whether this bill language provides DOR a right to exercise unrestricted discretion in applying the law in violation of the nondelegation doctrine.



## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has determined that the bill will have an indeterminate impact on local revenues. For Miami-Dade and Broward counties, the REC determined that sections 2 and 6 of the bill would increase Fiscal Year 2016-2017 receipts by \$49.8 million and reduce Fiscal Year 2017-2018 receipts by \$49.8 million, assuming that the counties could meet the June 1 deadline required by those sections of the bill.

### B. Private Sector Impact:

By increasing accountability of the VAB process, the bill may make the VAB process more efficient and easier to navigate for petitioners and their authorized agents.

### C. Government Sector Impact:

Based on petition count reports, only Miami-Dade and Broward counties have exceeded 10,000 petitions in the last three years. The total number of samples required for reviews of these counties are estimated by DOR to be approximately 1,078 for Broward County and 1,749 for Miami-Dade County.<sup>33</sup> There will be a fiscal impact for the DOR if they choose to initiate reviews, which they estimate as \$860,039 in fiscal year 2014-2015, and \$813,455, recurring.<sup>34</sup>

DOR estimates that it would need \$860,039 in Fiscal Year 2014-2015 and increased amounts in future years in order to perform the enhanced review process for counties receiving 10,000 or more petitions objecting to assessments in a single tax year.<sup>35</sup> This estimate assumes that only Miami-Dade and Broward counties would be subject to review.

## VI. Technical Deficiencies:

In limiting representation before the VAB in Section 7 of the bill, licensed professionals should be referred to by their definition in statute.

The term “property appraiser” is generally used in Florida to refer to the elected constitutional officer. A revision of “licensed property appraiser” on line 240 could instead read “licensed real estate appraiser.” Real estate appraiser licensure is found in s. 475.611(1)(h), F.S.

The term “realtor” means a member of the National Association of Realtors. The license they hold in Florida is “real estate broker.” A revision of “licensed realtor” on line 240 could instead read “licensed real estate broker” which is defined in s. 475.01(1)(a), F.S.

The term “licensed attorney” is defined in ch. 454, F.S.

<sup>33</sup> *Id.*

<sup>34</sup> DOR, *Fiscal Impact Analysis of SB 972* (Mar. 13, 2015).

<sup>35</sup> DOR, *Analysis of SB 972*, at 8 (Mar. 2015).

The term “certified public accountant” is defined in s. 473.302(4), F.S.

The bill also uses the term "certified tax specialist" on line 241. Florida Statutes do not include a designation or definition of “certified tax specialist.”

For clarification, on page 10, line 256, “county” should be changed to “value adjustment board.”

## **VII. Related Issues:**

The bill creates s. 194.032(4), F.S., which appears to require counties that certify the tax roll by November 1 to certify the tax roll by June 1. The date of June 1 appears to refer to June 1 of the next year, which is seven months after these rolls are currently being certified for collection. As drafted, the new language in s. 194.032(4), F.S., does not support the language being added to s. 193.122, F.S., in lines 79-81 of this bill.

Lines 150 and 156 of this bill directly refer to the Wall Street Journal. This language will be obsolete if at any time the Wall Street Journal ceases operations or simply changes its name. A more generic reference would address this issue.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 192.0105, 193.122, 194.011, 194.014, 194.015, 194.032, 194.034, and 195.002.

This bill creates section 194.038 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.