

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 499 Ad Valorem Taxation

SPONSOR(S): Appropriations Committee; Local & Federal Affairs Committee, Avila

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	16 Y, 0 N	Dugan	Langston
2) Local & Federal Affairs Committee	16 Y, 0 N, As CS	Monroe	Kiner
3) Appropriations Committee	24 Y, 0 N, As CS	Hawkins	Leznoff

SUMMARY ANALYSIS

The bill makes changes to the composition of the Value Adjustment Board (VAB), and amends various provisions addressing the procedures, and oversight of the VAB process. Specifically, the bill:

- Requires the VAB submit the certified assessment roll to the property appraiser by June 1 following the tax year in which the assessments were made, or by December 1 under certain circumstances.
- Revises the requirements for written authorization for representation before the VAB.
- Revises provisions related to the exchange of evidence and the admissibility of evidence.
- Repeals certain Rules adopted by the Department of Revenue which conflict with provisions of this bill.
- Clarifies that a taxpayer may appeal to the VAB the application or resetting of an assessment cap.
- Provides that a taxpayer may appeal the assessment of tangible personal property to the VAB if a complete, timely return was filed.
- Provides for an opportunity to correct an erroneous or incomplete tangible personal property return.
- Allows the property appraiser to waive penalties and interest if an assessment cap was improperly granted "as a result of a clerical mistake or an omission by the property appraiser," and allows the property owner 30 days to pay the taxes, interest, and penalties owed before a lien is filed.
- Provides clarification of the confidentiality of information in the evidence exchange process.
- Changes interest rates for disputed property taxes from 12 percent to the bank prime loan rate; also, the bill proposes to allow property owners to accrue interest at the prime rate when the property appraiser and the property owner reach a settlement prior to the VAB hearing.
- Changes the VAB composition by replacing a county commission member with a citizen member.
- Restricts the ability of a petitioner or property appraiser to reschedule hearings.
- Restricts the qualifications of those who can represent a taxpayer before the VAB.
- Elaborates on what is required in the VAB's findings of fact.
- Specifies that in the appointment/scheduling of special magistrates no consideration is to be given to assessment reductions recommended by any special magistrate.

The bill also requires counties to specify in the budget summary ad the proportionate amount of the proposed county tax millage and the amount of gross ad valorem taxes attributable to the budgets of the county constitutional officers.

The bill also extends by one year a process that allows school districts to collect unrealized school funds from the prior year in the event the VAB process is delayed.

The REC estimated that various provisions of the bill will have non-recurring impacts on local revenues of \$37.7 million in FY 2016-17, -\$37.7 million in FY 2017-18, and \$49.8 million in FY 2019-20. The bill is also estimated to have positive impacts on local revenues of \$5.1 million in FY 2016-17, \$3.9 million in FY 2017-18, and \$3.5 million annually thereafter. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

This bill may be a county or municipality 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:

Brief Background

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires all property be assessed at just value for ad valorem tax purposes,³ and provides for specified assessment limitations, property classifications and exemptions.⁴ From the perspective of protecting a taxpayer's rights, the most important parts of the process are the annual Truth in Millage (TRIM) notice and the VAB appeal process.

The TRIM notice

Each August, a Truth in Millage (TRIM) notice is sent out to all taxpayers providing specific information about their parcel.⁵ This notice is the key step in the property tax process.

The TRIM notice lists each taxing authority that levies taxes on the property, how much they collected from that parcel in the previous year, how much they propose to collect this year, and how much would be levied on the property if the taxing authority made no budget changes. It also lists the day and time that taxing authority will be holding its preliminary budget hearing, so that the taxpayer can participate in the process and provide input to the taxing authority if they disagree with the proposed taxes.⁶ After this meeting, where a tentative millage (tax) rate and budget are adopted, the taxing authority must then publish the proposed millage rate⁷ and the proposed budget⁸ in a newspaper of general circulation before holding a meeting for the final adoption of the millage rate and budget.⁹ This gives citizens two opportunities to have input into the process of setting the millage rate and budget.

The TRIM notice also provides key information about the valuation of the property. It lists the value the property appraiser has placed on the property, shows any reductions which have been made to that value due to a classification or assessment limitation, and shows what exemptions have been granted on that property and the value of those exemptions.¹⁰ This gives taxpayers notice of the assessment of their property, lets them review any assessment limitations or classifications applied, allows them to check to make sure they are getting all of the exemptions they are entitled to receive, and allows them to dispute any of these matters before the tax bills are sent out.

The Appeal Process and the VAB

¹ Art. VII, s. 1(a), Fla. Const.

² Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Art. VII, s. 4, Fla. Const.

⁴ Art. VII, ss. 3, 4, and 6, Fla. Const.

⁵ Section 200.069, F.S.

⁶ Section 200.069(4)(g), F.S.

⁷ Section 200.065(3), F.S.

⁸ Section 200.065(3)(l), F.S.

⁹ Section 200.065 (2)(d), F.S.

¹⁰ Section 200.069(6), F.S.

Taxpayers who disagree with the value placed on their property, no matter if the dispute involves the initial assessment of the property, the application of classified use values or assessment limitations, or the granting or denial of exemptions, have three methods for resolving the dispute:

- A taxpayer may request an informal conference with the property appraiser to resolve the issue.
- A taxpayer may typically file a petition with the Value Adjustment Board (VAB) at any time up to 25 days after the TRIM notice is mailed.¹¹
- A taxpayer may appeal to the Circuit Court within 60 days of the certification for collection of the tax roll or within 60 days of the issuance of a final decision by the VAB.¹²

A taxpayer may pursue any or all of these options. They are non-exclusive and none of these methods is a prerequisite for another.

Part 1 of Chapter 194, F.S., provides for administrative review of ad valorem tax assessments. These VAB hearings are intended to provide taxpayers with a venue in which they can present their case to a neutral party without the need to hire an attorney or go through the formal process of a circuit court case.

The property owner may initiate a review by filing a petition with the clerk of the VAB, typically within 25 days of the mailing of the TRIM notice.¹³ The petition must be accompanied by any required filing fee, which may not exceed \$15 on a single petition.¹⁴ VAB petition forms may be found at the Department of Revenue (DOR) website, the County Property Appraiser's office, and at the office or website of the VAB Clerk.¹⁵ The clerk of the VAB¹⁶ is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the VAB.

A taxpayer receives notice of their hearing at least 25 days before the scheduled hearing.¹⁷ A petitioner is required to provide the property appraiser with a list of evidence, copies of documentation, and summaries of testimony at least 15 days prior to the hearing before the VAB.¹⁸ If the petitioner provides this information, and sends the appraiser a written request for responsive information, the appraiser must provide a list of evidence and copies of documentation to be presented at the hearing, at least 7 days prior to the hearing.¹⁹

In most counties, the value adjustment board hearing takes place in front of a special magistrate instead of the VAB.²⁰ Special Magistrates are experienced appraisers and attorneys who are hired to serve as impartial hearing officers.²¹ After the hearing the special magistrate produces a recommended decision which is given to the VAB which produces the final decision. This step does not occur if the VAB hears the petition directly.

Once the final written decision is issued by the VAB, if the petitioner disagrees with the decision, he or she then has 60 days to file an action in circuit court contesting that decision.²²

¹¹ There are other windows and deadlines for filing petitions with the VAB. For example, a taxpayer must file with the VAB within 30 days of the mailing of the denied of certain exemptions. However, with rare exceptions such as a petition concerning the denial of a tax deferral, a petition filed within 25 days of the TRIM notice will be accepted by the VAB as timely filed. Examples of other deadlines can be found in Sections 194.011(3)(d), and 197.2425, F.S.

¹² Section 194.171(2), F.S.

¹³ Section 194.011(3), F.S.

¹⁴ Section 194.013, F.S.

¹⁵ Section 194.011(3)(a), F.S.

¹⁶ The county clerk usually serves as the clerk of the VAB. Section 194.015, F.S.

¹⁷ Section 194.032(2)(a), F.S.

¹⁸ Section 194.011(4)(a), F.S.

¹⁹ Section 194.011(4)(a), F.S.

²⁰ Section 194.035(1), F.S., requires the use of special magistrates in counties with a population over 75,000. Smaller counties may opt to use special magistrates.

²¹ Section 194.035(1), F.S.

²² Section 194.171(2), F.S.

In May 2014, the Florida Auditor General issued a report on county VABs and DOR's oversight of the VAB process.²³ The report made the following findings (footnotes are provided to indicate findings that are being addressed by provisions in this bill):

- Independence in the appeal process at the local level may have been compromised due to local officials involved in the process who may not have been impartial and whose operations are funded with the same property tax revenue at stake in the appeal process.²⁴ Additionally, enhanced uniformity in the way VABs document compliance with appeal process requirements, and the establishment of general information on Florida's property tax system for use statewide by all VABs in complying with the DOR rule requiring the VABs to discuss general information on Florida's property tax system and how taxpayers can participate,²⁵ could promote fairness and consistency in the appeal process.
- Noncompliance with the DOR rules for one VAB that gave the appearance of bias and undue influence in the appeal process in at least one instance.
- Special magistrates served on multiple VABs during the same tax year, which appears to be inconsistent with the State Constitution dual office holding prohibition.²⁶
- Selection of special magistrates may not have been based solely on experience and qualifications,²⁷ contrary to law and the DOR rules, and verification of such information was not always documented.
- Special magistrate training was not verified by DOR prior to issuing statements acknowledging receipt of training, and one VAB did not document special magistrate training in its records.
- Verification of compliance with law and the DOR rules relating to VAB prehearing requirements was not always documented.
- VAB organizational meetings were not always held in accordance with the requirements prescribed by the DOR rules.
- Prescribed procedures for commencing VAB hearings were not always followed by the VABs, contrary to the DOR rules.
- Some VAB records did not evidence consideration of the property appraiser's presumption of correctness issue, and one VAB did not consider this issue first at hearings, contrary to DOR rules.
- VAB written decisions were not always sufficiently detailed contrary to law and the DOR rules.^{28,29}
- Public notice of VAB organizational meetings and hearings were not always in accordance with the DOR rules.
- VABs did not always allocate expenses between the board of county commissioners and the school board, contrary to law.
- VAB citizen members did not always meet the specific requirements provided in law and the DOR rules to serve on the VABs, and verification of such requirements was not always documented.
- Documentation of taxpayer representation for a hearing was not evident for some petitions, contrary to the DOR rules.³⁰

Publication of Proposed Budget

Current Situation

After a county has adopted its proposed millage rate and budget, it is required to publish a budget summary in a newspaper of general circulation 2 to 5 days before the final budget hearing is held³¹.

²³ STATE OF FLORIDA AUDITOR GENERAL, COUNTY VALUE ADJUSTMENT BOARDS AND DEPARTMENT OF REVENUE'S OVERSIGHT THEREOF: PERFORMANCE AUDIT (May 2014).

²⁴ Changes made to address this finding are discussed under the heading "Composition of the VAB."

²⁵ Rule 12D-9.013(1)(i), F.A.C.

²⁶ See also 2012-17 Fla. Op. Att'y Gen. (May 17, 2012) (citing Art. II, s. 5(a), Fla. Const.

²⁷ Changes made to address this finding are discussed under the heading "Special Magistrates"

²⁸ See Rule 12D-9.030, F.A.C. (relating to recommended decisions) and Rule 12D-9.032, F.A.C. (relating to final decisions).

²⁹ Changes made to address this finding are discussed under the heading "Determinations of VAB."

³⁰ Changes made to address this finding are discussed under the heading "Signature Requirements for VAB Petitions."

This summary must include “for each budget and the total of all budgets, the proposed tax millages, balances, reserves, and the total of each major classification of receipts and expenditures.”³² Currently, the budgets of the constitutional officers are usually included as part of the county’s operating expenses and are not separately listed in the budget summary.³³

Proposed Changes

The bill amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to the budgets of the sheriff, the property appraiser, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections, respectively.

Tangible Personal Property Tax Returns

Current Situation

Section 193.062, F.S., requires that taxpayers file a tangible personal property tax return by April 1 of each tax year. An extension of that deadline can be granted under s. 193.063, F.S. There are consequences for failing to file a return or for filing an erroneous or incomplete return.

Section 193.073(2), states that: “If no tangible personal property tax return has been filed as required by law, including any extension which may have been granted for the filing of the return, the property appraiser is authorized to estimate from the best information available the assessment of the tangible personal property of a taxpayer who has not properly and timely filed his or her tax return.”

Section 193.073(1), F.S., provides for consequences, including the possibility of “an assessment in triplicate” if the Property Appraiser finds that “an erroneous or incomplete statement of personal property has been filed by a taxpayer or that all the property of a taxpayer has not been returned for taxation.”

Finally, s. 194.034(1)(f), F.S., which concerns hearings before the VAB, provides that “An assessment may not be contested until a return required by s. 193.052 has been filed.” However, this section does not explicitly state when that return must be filed and does not indicate if an erroneous or incomplete return is a sufficient filing to allow a taxpayer to contest their assessment. As a result, a taxpayer who has not previously filed a tangible personal property return may be permitted to appeal to the VAB if they bring a return to their hearing or if they filed a return which was too incomplete for the property appraiser to use it in the assessment process.

Proposed Changes

First, this bill amends s. 193.073, F.S., to require that if a property appraiser finds a tangible personal property return to be incomplete or erroneous before the TRIM notice is mailed, the property appraiser must notify the affected taxpayer and give him or her 30 days to correct the problem, before any consequences occur.

Second, the bill amends s. 194.034(1)(f), F.S. , (which is renumbered as s.194.034(1)(j), F.S., by this bill), to state that in order to appeal an assessment to the value adjustment board the tangible personal property return must have been timely filed (including any extensions granted by the property appraiser). In addition, if the taxpayer was notified that the return was erroneous or incomplete, they must have filed a complete return during the 30 days following the notification that the return was erroneous or incomplete.

Conclusion of VAB Proceedings

³¹ Section 200.065(2)(d), F.S.

³² Section 129.03(3)(b), F.S.

³³ Section 129.03(3), F.S.

Current Situation

Section 194.032(3), F.S., requires that “The board shall remain in session from day to day until all petitions, complaints, appeals, and disputes are heard.” Given the large number of petitions that are heard in some counties, it can take years before the VAB finishes hearing all petitions for a given tax year. For example, as of the writing of this analysis, Broward, Miami-Dade, and Jefferson Counties have not certified the final numbers from their 2014 VABs to the DOR.³⁴

This has caused issues with the Florida Education Financing Program (FEFP). Each school district’s required local effort (RLE) millage rate is determined by a statutory procedure.³⁵ Because the decisions of the VAB typically reduce the school board’s tax base, the RLE rate does not produce the amount of revenue projected. Accordingly, school districts are allowed to levy an additional millage to make up for this deficit. This additional millage rate is referred to as the prior period funding adjustment millage (PPFAM). The PPFAM is calculated in July of each year. However, the calculation only includes changes in taxable value if the change has been finally adjudicated. If final adjudication does not occur prior to the PPFAM calculation in July, the school district cannot collect the unrealized school funds until that final adjudication occurs, which may be years later.³⁶

In 2015, the Legislature passed a temporary solution for school districts where the local VAB process delays completion of the certification of the final tax roll for longer than one year. For the 2015-16 fiscal year only, such districts can “speed-up” the levy of 2014 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district’s most recent unrealized RLE for which a PPFAM was determined.³⁷

Proposed Changes

The bill requires the VAB to hear all petitions, complaints, appeals, and disputes and submit the certified assessment roll to the property appraiser by June 1 following the tax year in which the assessments were made, beginning with the 2018 tax roll. The June 1 deadline is extended to December 1 in any county where the VAB petitions increase by more than 10 percent from the prior year.

Similar to legislation passed in 2015, the bill provides school districts with a temporary funding solution when the local VAB process delays completion of the certification of the final tax roll for longer than one year. For the 2016-17 fiscal year only, such districts can “speed-up” the levy of 2015 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district’s most recent unrealized RLE for which a PPFAM was determined.

Appealing Assessment Limitations to the VAB

Current Situation

Sections 193.155, 193.193.1554, and 193.1555, F.S., all create limitations on the amount that the assessment of a parcel can increase in any given year. These caps reset when there is a change in ownership of the property. Section 193.155(8)(j), F.S., provides a specific right for homeowners who are porting the differential on their homestead to appeal to the VAB. However, in other situations the statutes are unclear on if a disagreement on the implementation of an assessment cap can be

³⁴ For spreadsheets containing the VAB petition summaries as reported to the DOR, see FLORIDA DEPARTMENT OF REVENUE, PROPERTY TAX DATA PORTAL: VAB SUMMARY available at <http://dor.myflorida.com/dor/property/resources/data.html> (last visited on January 11, 2016).

³⁵ 1011.62(4), F.S

³⁶ For more detailed information on this calculation, please see the expanded background provided at the end of this section.

³⁷ Section 1011.62(4)(e)1.c., F.S.

appealed to the VAB. On November 12, 2015, the DOR produced an Advisory Memorandum³⁸ which stated that such matters could be appealed to the VAB.

Proposed Changes

This bill creates sections 193.155(11), 193.1554(11), and 193.1555(11), F.S., to explicitly state that taxpayers have the right to appeal the implementation of these assessment caps on their property to the VAB.

Assessment Limitations Improperly Granted

Current Situation

Section 196.161(1)(b), F.S., provides that if an exemption was improperly granted on homestead property “as a result of clerical mistake of an omission by the property appraiser” the taxpayer will not be assessed penalties or interest. This statute also allows the taxpayer 30 days to pay the taxes and any penalties or interest due before a lien is filed on his or her property. Since a homestead exemption is required for the homestead assessment limitation to be granted, this statute has allowed property appraiser’s to waive penalties and interest when the homestead assessment limitation was improperly applied due to an error or omission.

There is no statutory authority allowing a property appraiser to waive penalties or interest when the other assessment limitations are improperly granted due to an error or omission. In addition, the property owner is given no time to pay off the assessments before lien is filed on the property.

Proposed Changes

Sections 193.1554(10) and 193.1555(10), F.S. are amended to specifically allow a property appraiser to waive penalties and interest if an assessment limitation was improperly granted “as a result of clerical mistake of an omission by the property appraiser” and to allow the taxpayer 30 days to pay the taxes and any penalties or interest due before a lien is filed on his or her property.

Signature Requirements for VAB Petitions

Current Situation

The property owner or their agent may initiate proceedings before the VAB by filing a petition with the clerk of the VAB.³⁹ There is no statutory requirement that the petitioner sign the VAB petition. However, DOR rules state, “A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer.”⁴⁰ DOR does not require any evidence that the taxpayer has authorized the filing of the petition, or that the taxpayer is aware of the proceedings, if the petition is filed by a licensed agent. DOR defines a licensed agent as a licensed real estate broker, sales associate, appraiser, or certified public accountant, or a member of the Florida Bar.⁴¹

Proposed Changes

The bill amends s. 194.011, F.S., to require that a petition to the VAB must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer’s written authorization of the representation, unless the representative is a person listed under s. 194.034(1)(a), F.S. That list includes:

- an employee or affiliated entity of the taxpayer,
- an attorney who is a member of The Florida Bar,

³⁸ Advisory Memorandum from Steve Keller to Manual Blanco, dated November 12, 2015, on file with the Local & Federal Affairs Committee

³⁹ Section 194.011(3)

⁴⁰ Rule 12D-9.018(4), F.A.C.

⁴¹ Rule 12D-9.018(5), F.A.C.

- a real estate appraiser licensed under chapter 475,
- a real estate broker licensed under chapter 475, or
- a certified public accountant licensed under chapter 473.

If an individual listed in s. 194.034(1)(a), F.S., is found by the VAB to have knowingly and willfully filed a petition without the taxpayer's authorization that individual will have to provide written authorization for all of his or her petitions which are heard by the VAB for the next year. The bill also specifies that an individual, other than those listed above, may represent the taxpayer if they produce a power of attorney. If the person representing the taxpayer is receiving no compensation (such as a neighbor or grandchild) then only written authorization is required.

The bill specifies that a power of attorney or written authorization is valid for one tax year, and a new power of attorney or written authorization by the taxpayer shall be required for each subsequent tax year. In addition, because this bill does allow a licensed individual to represent a taxpayer without showing written authorization, a provision has been added to s. 194.011(3)(h), F.S., to clarify that written authorization is still needed to access a taxpayer's confidential information.

Property Record Cards

Current Situation

A petitioner is required to provide the property appraiser with a list of evidence, copies of documentation, and summaries of testimony on which the taxpayer intends to rely at least 15 days prior to the hearing before the VAB.⁴² If the petitioner provides this information, and sends the appraiser a written request for responsive information, the appraiser must provide a list of evidence and copies of documentation to be presented at the hearing, including the "property record card,"⁴³ but only if the petitioner checks the appropriate box on the form.⁴⁴ The property appraiser is not required to provide a copy of the property record card if it is available online.

The term "property record card" is undefined in statute. The term previously referred to the paper card maintained in the office of the property appraiser where all information specific to a property was written down.⁴⁵ Now that property appraiser's offices are computerized, what constitutes a "property record card" is not as precisely understood, but it is generally presumed to be a record maintained by the property appraiser containing information needed to assess properties in his or her jurisdiction. Section 194.032(2)(a), F.S., does provide some guidance by referring to "the property record card containing relevant information used in computing the current assessment."

Proposed Changes

The bill modifies the procedures for the exchange of evidence. When the property appraiser responds to the petitioner's request for evidence, the property appraiser must include the petitioner's property record card and the property record cards for any comparable property listed as evidence, except those cards that are available online. The bill specifically requires that any confidential information on the property record cards be redacted before they are provided.

Confidential Information

Current Situation

⁴² Section 194.011(4)(a), F.S.

⁴³ Section 194.011(4)(b), F.S.

⁴⁴ Section 194.032(2)(a), F.S.

⁴⁵ Before computerization, property appraiser's office contained large cabinets full of papers cards. Each one contained information about a specific property and as information was gathered about the property, notes were handwritten on those cards. For example, each time the property was sold, the selling price and location of the deed in the clerk's records would be written down.

Section 193.074, F.S. provides that “All returns of property... submitted by the taxpayer pursuant to law shall be deemed confidential.” Similar provisions in other statutes ensure that social security numbers, federal income tax returns, medical records, and proprietary business information are also considered confidential.⁴⁶ However, information submitted to the VAB as evidence generally becomes public record and is subject to Florida’s public records laws.⁴⁷ Since evidence must be submitted under the evidence exchange rules at least 15 days prior to the VAB hearing, it is unclear at what point in time the previously confidential information becomes public record.

Proposed Change

The bill specifies that evidence which is confidential under current law shall remain confidential until it is submitted to the VAB for consideration and admission into the record.

Interest Rate on Partial Payments

Current Situation

Since the VAB process can take years to complete, a problem emerged because petitioners were withholding payment of their entire assessment until their VAB petitions were resolved and new tax bills issued. This could delay the collection of revenue for years and was causing a problem with revenue flow to certain taxing authorities. To address this issue, in 2011 the Legislature created s. 194.014, F.S., requiring petitioners to pay a portion of their ad valorem taxes and all of their non-ad valorem assessments before those taxes and assessments become delinquent on April 1.

Taxpayers challenging their assessments must pay at least 75 percent of the ad valorem taxes.⁴⁸ Petitioners challenging the denial of an exemption or classification, or petitioners contending that their property was not substantially complete, must pay those taxes they admit in good faith are due.⁴⁹ If these payments are not made before April 1, and a petition is pending, the VAB is required to issue a written decision by April 20 denying the petition.⁵⁰

If the VAB subsequently 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.⁵¹ If the VAB determines that a refund is due, the overpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent until a refund is paid.⁵² Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice.

Similarly, taxpayers who file a petition in circuit court must pay the tax collector an amount not less than the amount of tax which the taxpayer admits in good faith to owe.⁵³ If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, a judgment is entered against the taxpayer for the deficiency and for interest on the deficiency at a rate of 12 percent.⁵⁴

Proposed Changes

⁴⁶ See as examples Sections 192.105, 193.114(5), 195.027(3)&(6), and 196.101(4)(c), F.S.

⁴⁷ Informal, Fla. Op. Att’y Gen. (April 30, 2010) *available at*

<http://www.myfloridalegal.com/ago.nsf/Opinions/946D6B5DA86200268525771B00485776>; FLORIDA DEPARTMENT OF REVENUE PROPERTY TAX INFORMATIONAL BULLETIN, PTO 10-07 – VALUE ADJUSTMENT BOARD HEARINGS AND CONFIDENTIALITY (May 27, 2010).

⁴⁸ Section 194.014(1)(a), F.S.

⁴⁹ Section 194.014(1)(b), F.S.

⁵⁰ Section 194.014(1)(c), F.S.

⁵¹ Section 194.014(2), F.S.

⁵² Section 194.014(2), F.S.

⁵³ Section 194.171(3), F.S.

⁵⁴ Section 194.192, F.S.

The bill changes the amount of interest that accrues on partial payments of ad valorem taxes from 12 percent to the bank prime loan rate as determined by the Federal Reserve on July 1 or the first business day thereafter. Further, the bill allows for interest accrual, at the prime rate, when the property appraiser and the property owner reach a settlement prior to the VAB hearing. Currently, the bank prime rate is published on a website titled "H.15 Selected Interest Rates" and is 3.25 percent.⁵⁵ The bill does not change the interest rate for amounts in dispute for court proceedings.

Composition of the VAB

Current Situation

In 1895, the Legislature provided county commissions with exclusive responsibility for hearing taxpayer appeals from assessments.⁵⁶ In 1969, the Legislature changed the membership to include school board members.⁵⁷ In 2008, the Legislature again changed the membership to include two citizen members.⁵⁸ Currently, the VAB consists of two members of the governing body of the county as elected from the membership of the board of said governing body (one of whom shall be elected chairperson), one member of the school board as elected from the membership of the school board, and two citizen members.⁵⁹ Members of the VAB may be temporarily replaced by other members of the respective boards.

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.

Per diem compensation is permitted if both governing board of the county and the school board agree.

Proposed Changes

The bill changes the composition of the VAB by replacing one member from the governing body of the county with one citizen member. The membership would be comprised as follows:

- One member of the governing body of the county as elected from the membership of the board of said governing body.
- One member of the school board as elected from the membership of the school board.
- Two citizen members, appointed by the governing body of the county, who own homestead property in the county.
- One citizen member, appointed by the school board of the county, who owns commercial property in the school district.

A quorum of the board is defined as three members, which must include both the member of the county governing board and the member of the school board, as well as one citizen member. No meeting shall take place unless a quorum is present. Boards are not permitted to temporarily replace members. One member shall be elected to serve as chair. The bill makes per diem payments for members of the board mandatory.

Rescheduling VAB Hearings

Current Situation

⁵⁵ FEDERAL RESERVE, H.15 SELECTED INTEREST RATES (March 9, 2015) *available at* <http://www.federalreserve.gov/releases/h15/current/> (last visited December 18, 2015).

⁵⁶ Ch. 4322, Laws of Fla. (1895).

⁵⁷ Ch. 69-140, Laws of Fla.

⁵⁸ Ch. 2008-197, Laws of Fla.

⁵⁹ Section 194.015, F.S.

Prior to 2002, petitioners had no right to reschedule a VAB hearing under any circumstances. Some VABs did allow petitioners to reschedule for “good cause” but there was no consensus as to procedures or what constituted good cause. In 2002 the Legislature provided a right to reschedule,⁶⁰ adding a provision to Section 194.032(2), F.S., which states:

Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing

When the DOR implemented this statute, it wrote a rule stating that a petitioner had the right to reschedule one time without showing good cause⁶¹ and an unlimited number of times if good cause is shown⁶². As part of this rule, the Department created a list of circumstances that constituted good cause.⁶³

Proposed Changes

Under this bill, the petitioner and the property appraiser can each reschedule a VAB hearing a single time for good cause. The bill defines good cause as “circumstances beyond the control of the person seeking to reschedule the hearing that reasonably prevent the party from having adequate representation at the hearing.” Good cause specifically includes the failure of the property appraiser to comply with statutory evidence exchange guidelines. Finally, the bill provides that if the hearing is rescheduled, the petitioner must be notified by the clerk of the rescheduled hearing 15 days before the rescheduled hearing is held, unless this notice is waived by both parties.

Finally the bill specifically repeals Rule 12D-9.019(4) and (5), F.A.C., relating to Scheduling and Notice of a Hearing which is in conflict with the provisions of this bill and its intent.

Taxpayer Representation

Current Situation

Section 194.034(1)(a), F.S., allows a taxpayer to be represented at the VAB by “an attorney or agent.” DOR rules state, “The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the VAB.”⁶⁴

Proposed Changes

The bill restricts the persons who can represent the taxpayer to:

- an employee or an affiliated entity of the taxpayer,
- an attorney who is a member of The Florida Bar,
- a real estate appraiser licensed under chapter 475,
- a real estate broker licensed under chapter 475,
- a certified public accountant licensed under chapter 473,
- any person with a power of attorney, or
- an uncompensated individual with written authorization.

⁶⁰ Chapter 2002-18, s. 3, Laws of Florida.

⁶¹ Rule 12D-9.019(4)(a), F.A.C.

⁶² Rule 12D-9.019(4)(b), F.A.C.

⁶³ Rule 12D-9.019(4)(b), F.A.C.

⁶⁴ Rule 12D-9.018(3), F.A.C.

Determinations of VAB

Current Situation

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.⁶⁵ 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.⁶⁶ If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the VAB. The clerk of the VAB, upon issuance of a decision, shall notify each taxpayer and the property appraiser of the decision of the VAB. If requested by DOR, the clerk shall provide to DOR 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, F.S., in the manner and form requested.

Proposed Changes

The bill clarifies what must be included in the VAB's findings of fact. Specifically, it states that findings of fact must be based on admitted evidence or a lack thereof.

Special Magistrates

Current Situation

Current law requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings.⁶⁷ Before conducting hearings, a VAB must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.⁶⁸

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 five 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 five 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 five years' experience in tangible personal property valuation.

Proposed Changes

The bill specifies that an attorney special magistrate shall hear petitions regarding assessment limitations and denials of tax deferrals. The bill also specifies that in the appointment/scheduling of special magistrates no consideration is to be given to assessment reductions recommended by any special magistrate either in the current year or in any prior year.

B. SECTION DIRECTORY:

Section 1 amends s. 129.03, F.S., to require the board of county commissioners to specify in the budget summary the proportionate amount of the proposed county tax millage and the proportionate amount of gross ad valorem taxes attributable to county constitutional officers.

Section 2 amends s. 192.0105, F.S., to make conforming changes related to taxpayer representation before the VAB.

⁶⁵ Section 194.034(2), F.S.

⁶⁶ Section 194.034(2), F.S.; *see also* rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

⁶⁷ Section 194.035, F.S.

⁶⁸ Section 194.011(5)(a)2., F.S.

Section 3 amends 193.073, to require that if a property appraiser finds a tangible personal property return to be incomplete or erroneous before the TRIM notice is mailed, the property appraiser must notify the affected taxpayer and give him or her 30 days to correct the problem, before any consequences occur.

Section 4 amends s. 193.122(1), F.S., to require VABs to complete all hearings and certify assessment rolls to the property appraiser by June 1 following the tax year in which the assessments were made, or by December 1 if the petitions in that county increased by more than 10 percent from the prior year.

Section 5 provides applicability for changes made to ss. 193.122(1) and 194.032(4), F.S.

Section 6 creates s. 193.155(11), F.S., to explicitly grant a taxpayer the right to appeal the implementation of the assessment limitation to their homestead property to the VAB.

Section 7 amends s. 193.1554(10), F.S., to specifically allow a property appraiser to waive penalties and interest if an assessment limitation was improperly granted “as a result of clerical mistake of an omission by the property appraiser” and to allow the taxpayer 30 days to pay the taxes and any penalties or interest due before a lien is filed on his or her property. It also creates s. 193.1554(11), F.S., to explicitly grant a taxpayer the right to appeal the implementation of the assessment limitation to their nonhomestead residential property to the VAB.

Section 8 amends s. 193.1555(10), F.S., to specifically allow a property appraiser to waive penalties and interest if an assessment limitation was improperly granted “as a result of clerical mistake of an omission by the property appraiser” and to allow the taxpayer 30 days to pay the taxes and any penalties or interest due before a lien is filed on his or her property. It also creates s. 193.1555(11), F.S., to explicitly grant a taxpayer the right to appeal the implementation of the assessment limitation to their certain residential and nonresidential property to the VAB.

Section 9 amends s. 194.011, F.S., to revise provisions related to VAB petitions and VAB evidence exchange procedures.

Section 10 amends s. 194.014, F.S., to change the interest rate for disputed property tax assessments from 12 percent to the bank prime loan rate established by the Federal Reserve.

Section 11 amends 194.015, F.S., to revise the composition of the VAB; board members elect the chairman; to provide for per diem compensation; provides applicability.

Section 12 amends s. 194.032, F.S., to revise provisions related to evidence exchange, rehearings, and the VAB timeframe for finishing hearings and certifying the assessment roll.

Section 13 amends s. 194.034, F.S., to specify the authorization need for certain the persons represent a person before the VAB, to elaborate on what is required in the VAB’s findings of fact, and to specify that for a taxpayer to appeal their tangible personal property assessment to the VAB, his or her tangible personal property return must be timely and complete.

Section 14 amends s. 194.035, F.S., to specify that attorney special magistrates shall hear petitions regarding assessment limitations and the denial of tax deferrals, and to specify that value reductions given by special magistrates cannot be considered in the hiring of special magistrates.

Section 15 amends s. 1011.62(4)(e), F.S., to provide an alternative computation of school funds for the 2016-2017 fiscal year when the final taxable value of a school district is delayed by VAB hearings; provides applicability.

Section 16 nullifies certain Rules promulgated by the DOR which are in conflict with the provision of this act.

Section 17 provides a finding of important state interest.

Section 18 provides an effective date of July 1, 2016, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOR will update the administrative rules relating to VABs to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference evaluated the impacts of some of the provisions included in the bill:

- Sections 4, 5, and 12, which require VABs to complete their hearings and certify the assessment roll by June 1, are expected to have a \$49.8 million non-recurring positive impact to local government revenues in Fiscal Year 2019-2020 due to a speed-up in the process.
- Sections 7 and 8 reduce the collection of penalties and interest by a property appraiser related to improper assessments granted “as a result of clerical mistake of an omission by the property appraiser”. These sections are expected to have a recurring negative impact on local government of \$(0.5) million beginning in FY 2016-17, with \$(0.2) million of the total impacting school levies.
- Section 10 reduces the interest rates on ad valorem taxes contested in a VAB proceeding. This section is expected to have a positive impact on local governments of \$5.6 million in Fiscal Year 2016-2017, \$4.4 million in FY 2017-18 and \$4.0 million annually thereafter. Most petitioners in Miami-Dade County, which has the most VAB petitions, pay the full amount of ad valorem taxes and earn interest at 12 percent annually on the overpaid amount if successful in the petition; the result is more interest is paid out to petitioners than the amount of interest brought in to the county from interest paid on tax underpayments.
- Section 15, provides school districts with a temporary funding solution when the local VAB process delays completion of the certification of the final tax roll for longer than one year. For the 2016-17 fiscal year only, such districts can “speed-up” the levy of 2015 unrealized RLE funds by levying a PPFAM equal to 75 percent of the district’s most recent unrealized RLE for which a PPFAM was determined. This results in a non-recurring, positive fiscal impact of \$37.7 million in Fiscal Year 2016-17 and a non-recurring, negative fiscal impact of \$(37.7) million the following year.

2. Expenditures:

The bill requires local governments to take the following actions, which are likely to require expenditure of local funds:

- Section 1 requires local governments to break out the budgets of county constitutional officers in the budget summary and the TRIM notice.
- Sections 4, 5, and 12 require VABs to complete hearings and certify the tax roll to the property appraiser prior to June 1 of the year following the assessment, unless the petitions in that county increased by more than 10 percent from the prior year.
- Section 9 requires the property appraiser to provide more information as part of the evidence exchange.
- Section 11 authorizes VAB members to receive per diem expenses without requiring the school board and the board of county commissioners to allow such compensation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers that successfully dispute ad valorem assessments through a VAB hearing are expected to receive less revenue (interest paid on overpayments of disputed tax amounts) because of the interest rate change. Taxpayers may receive more revenue (interest paid on overpayments of disputed tax amounts) because this act allows for interest accrual when the property appraiser and the petitioner reach a settlement prior to the VAB hearing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(a), of the Florida Constitution may apply because this bill may require local governments to take action that requires the expenditure of money. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. The bill does contain a statement of important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOR projects that rules and forms will need to be amended to implement the provisions of the bill.⁶⁹ If the form or its proposed amendment imposes a requirement or solicits information not specifically required by statute or existing rule, the form would constitute a rule⁷⁰ and must be adopted through the statutory rulemaking procedure.⁷¹ Additionally, any generally applicable statement by DOR implementing, interpreting, or prescribing policy or procedure requirements necessary to implement the provisions of the bill must be adopted through rulemaking.⁷² The bill does not provide any additional rulemaking authority for DOR.

Rulemaking authority is delegated by the Legislature⁷³ by law authorizing an agency to “adopt, develop, establish, or otherwise create”⁷⁴ a rule. Agencies do not have discretion whether to engage in rulemaking.⁷⁵ To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.⁷⁶ The grant of rulemaking authority itself need not be specific or detailed.⁷⁷ The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁷⁸

⁶⁹ 2016 Agency Legislative Bill Analysis, Department of Revenue, HB 499 (12/03/2015), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=6302&yr=2016> (accessed 01/11/2016), and a copy of which is maintained on file by the Local and Federal Affairs Committee.

⁷⁰ Section 120.52(16), F.S.

⁷¹ Section 120.54(1)(a), F.S.

⁷² *Id.*

⁷³ *SW. Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁷⁴ Section 120.52(17), F.S.

⁷⁵ Section 120.54(1)(a), F.S.

⁷⁶ Sections 120.52(8) & 120.536(1), F.S.

⁷⁷ *Save the Manatee Club, Inc.*, supra at 773 So. 2d 599.

⁷⁸ *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass'n*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

DOR currently is authorized to adopt rules and forms for the assessing and collecting of taxes.⁷⁹ DOR also is required to administer and enforce the taxes levied and imposed under the chapter.⁸⁰ If necessary to resolve an immediate danger to public health, safety, or welfare, DOR is authorized to adopt emergency rules.⁸¹ While DOR would appear to have sufficient authority to implement the provisions of the bill by administrative rulemaking,⁸² any question may be resolved by authorizing DOR to use its present rulemaking authority under s. 201.11, F.S., to implement the powers granted under the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2016, the Local & Federal Affairs Committee adopted a strike-all to the bill which makes the following changes to the bill:

- The signature requirement and the restrictions on who can represent a taxpayer have been modified as follows:
 - A licensed individual need not provide written authorization before filing a petition. However, if an individual agent is found by the VAB to have knowingly and willfully filed a petition without the taxpayer's authorization that individual will have to provide written authorization for all of their petitions which are heard by the VAB for the next year.
 - If an unlicensed individual is representing a person before the VAB, they will need to provide a power of attorney.
 - An unlicensed individual receiving no compensation, such as a grandchild or a neighbor, need only provide written authorization under the strike all.
- It contains a provision to clarify that written authorization is still needed to access the taxpayer's confidential information.
- A change was made to the language on rescheduling to clarify that both the petitioner and the property appraiser may each reschedule the hearing one time, and to provide that the 15 day notice of the rescheduled hearing is not needed if both parties waive that requirement.
- The strike-all eliminates that portion of the original bill which created Section 194.011(4)(c), F.S. Instead, the strike-all includes clearer language which states that if:
 - If a property appraiser requested information from a taxpayer in writing under the authority of any statute, and
 - The taxpayer had knowledge of that information and denied it to the property appraiser, then
 - That specific information cannot be used as evidence in the VAB hearing by the petitioner.
- The bill amends s. 194.034(1)(d), F.S., clarifying that the VAB may not admit evidence which was previously requested of the petitioner in writing, if:
 - the information was requested at any time during the assessment process up to the hearing of the petition,
 - the information was requested under the authorization of any statute, and
 - the petitioner had knowledge of the information and denied it to the property appraiser.
- The amendment contains language which repeals the Rules adopted by the DOR which conflict with the limitations on rescheduling hearings and the admission of evidence knowingly denied to the property appraiser that are contained in this bill.
- The strike-all adds a paragraph 11 to sections 193.155, 193.1554, and 193.155, F.S. to clarify that a taxpayer who disagrees with the application or resetting of an assessment cap can appeal that decision to the VAB.

⁷⁹ Section 195.022, and 195.027, F.S.

⁸⁰ Section 195.002, F.S.

⁸¹ Section 120.54(4), F.S. Emergency rules adopted under this subsection are effective for only 90 days and may not be renewed unless the agency as initiated regular rulemaking and there is a pending challenge to the proposed rules or the proposed rules are awaiting legislative ratification. Section 120.54(4)(c), F.S.

⁸² Section 120.536(1), F.S.

- A change was made to s. 194.035, F.S., which specifies which type of magistrate should hear which type of case, to specify that attorney special magistrates should hear cases involving the application of an assessment cap or the denial of a tax deferral.
- The amendment provided that taxpayer may appeal to the VAB if a complete, timely return was filed. If the return is found to be incomplete or erroneous before the TRIM notice is sent, the property appraiser shall notify the taxpayer of that fact, and the taxpayer shall have 30 days to correct the return. If the return is corrected, the taxpayer has the right to appeal their assessment to the VAB. If the return is not corrected, the right to appeal to the VAB is lost
- Finally, the strike-all contains language regarding the assessment of taxes when an assessment limitation was improperly granted. The amendment allows the property appraiser to waive penalties and interest if the assessment cap was improperly granted “as a result of a clerical mistake or an omission by the property appraiser.” It also allows the property owner 30 days to pay off the taxes and any interest and penalties owed before a lien is filed on his or her property.

On February 16, 2016, the Appropriations Committee adopted two amendments, a strike-all and one amendment to the strike all. The amendment to the strike-all removed section 3 of the strike all. The adopted strike-all makes the following changes to the bill:

- The strike-all eliminates portions of sections 9 and 13 of CS/HB 499, which limited evidence that could be presented before the VAB, and returns those portions of statute to current law.
- The strike-all revises a portion of section 11 of CS/HB 499, which changed the composition of the VAB members. CS/HB 499 proposed that the third citizen member of the VAB must be a licensed real estate appraiser, whereas the strike-all revises that provision to require the third citizen member to own homestead in the county.
- The strike-all revises a portion of section 13 of CS/HB 499, which specified who can represent a taxpayer before the VAB, by changing the “corporate representative of the taxpayer” to the “employee or affiliated entity of the taxpayer”.
- The strike-all eliminates a portion of section 16 of CS/HB 499, which proposed to repeal the Rules adopted by the DOR which conflicted with the admission of evidence at the VAB that were contained in sections 9 and 13 of CS/HB 499.