

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 499	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Appropriations Committee; Local & Federal Affairs Committee; Avila and others	117 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 766	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 499 passed the House on March 3, 2016. The bill was amended by the Senate on March 9, 2016, and subsequently passed the House on March 9, 2016.

The bill amends various provisions of the Value Adjustment Board (VAB) process. Specifically, the bill:

- Requires VABs to submit the certified assessment roll to the property appraiser by June 1 following the year in which the assessments were made, or by December 1 under certain circumstances.
- Revises the requirements for representation of a petitioner before the VAB.
- Revises provisions related to the exchange of evidence prior to a VAB hearing.
- Repeals certain Rules adopted by the Department of Revenue which conflict with provisions of the bill.
- Expands opportunities for a taxpayer to appeal property tax determinations to the VAB.
- Provides for an opportunity to correct an erroneous or incomplete tangible personal property return.
- Provides property appraisers may 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.
- Provides property owners 30 days to pay the taxes, interest, and penalties owed on an improperly granted assessment cap before a lien is filed on their property.
- Changes interest rates for disputed property taxes at the VAB from 12 percent per annum to the bank prime loan rate; also, provides for interest accrual for property owners that reach a settlement with the property appraiser prior to the VAB hearing.
- Restricts the ability of a petitioner or property appraiser to reschedule VAB hearings.
- 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 permanently extends a process that allows school districts to collect certain unrealized school funds from the prior year, on an estimated basis, in the event the VAB process is delayed in a given year.

The bill also provides certain counties an additional 10 days to adopt a non-ad valorem assessment roll under certain circumstances.

The bill is expected to impact local government revenues by +\$42.8 million, +\$3.2 million, +\$3.5 million, and +\$15.6 million in Fiscal Years 2016-17 through 2019-20, respectively. Thereafter the recurring annual local government revenue impact is expected to be +\$3.5 million. See the FISCAL COMMENTS section for more details.

The bill was approved by the Governor on March 25, 2016, ch. 2016-128, L.O.F., and will become effective on July 1, 2016, except as otherwise provided in the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0499z1.FTC

DATE: April 14, 2016

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

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, two important elements of the ad valorem taxation 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

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.

¹ Fla. Const. art. VII, s. 1(a).

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 Fla Const. art. VII, s. 4.

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

⁵ s. 200.069, F.S.

⁶ s. 200.069(4)(g), F.S.

⁷ s. 200.065(3), F.S.

⁸ s. 200.065(3)(1), F.S.

⁹ s. 200.065 (2)(d), F.S.

¹⁰ s. 200.069(6), F.S.

The Appeal Process and the VAB

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 file a petition with the 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 through local VABs. 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 for 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 This process is commonly referred to as the evidence exchange.

In most counties, the VAB 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.

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 s. 194.171(2), F.S.

¹³ s. 194.011(3), F.S.

¹⁴ s. 194.013, F.S.

¹⁵ s. 194.011(3)(a), F.S.

¹⁶ The county clerk usually serves as the clerk of the VAB. *See* s. 194.015, F.S.

¹⁷ s. 194.032(2)(a), F.S.

¹⁸ s. 194.011(4)(a), F.S.

¹⁹ *Id.*

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 s. 194.035(1), F.S.

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

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. 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,²⁴ 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 year, which appears to be inconsistent with the State Constitution dual office holding prohibition.²⁵
- Selection of special magistrates may not have been based solely on experience and qualifications,²⁶ contrary to law and the DOR rules, and verification of such information was not always documented.
- Special magistrate training was not verified by the 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 DOR rules.^{27,28}
- Public notice of VAB organizational meetings and hearings were not always in accordance with 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 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 DOR rules.²⁹

²² s. 194.171(2), F.S.

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

²⁴ Rule 12D-9.013(1)(i), F.A.C.

²⁵ See also 2012-17 Fla. Op. Att'y Gen. (May 17, 2012) (citing Fla Const. art. II, s. 5(a)).

²⁶ Changes made to address this finding are discussed under the heading "Special Magistrates"

²⁷ See Rule 12D-9.030, F.A.C. (relating to recommended decisions) and Rule 12D-9.032, F.A.C. (relating to final decisions).

²⁸ Changes made to address this finding are discussed under the heading "Determinations of VAB."

²⁹ Changes made to address this finding are discussed under the heading "Signature Requirements for VAB Petitions."

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 year. An extension of that deadline can be granted under s. 193.063, F.S. Current law establishes consequences for failing to file a return or for filing an erroneous or incomplete return in ss. 193.073 and 194.034, F.S.

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.

Effect of the Bill

First, the 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 VAB 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

Current Situation

Section 194.032(3), F.S., requires that the VAB “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 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.³⁰

³⁰ 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).

Delays in completion of VAB proceedings have caused some delays withing the Florida Education Financing Program (FEFP). Each school district's required local effort (RLE) millage rate is determined by a statutory procedure.³¹ 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.

The 2015 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 an estimated PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined.³²

Effect of the Bill

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 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.

The bill provides school districts with a funding solution when the local VAB process delays completion of the certification of the final tax roll for longer than one year. Such districts can "speed-up" the levy of unrealized RLE funds in a given year by levying a PPFAM equal to 75 percent of the district's most recent unrealized RLE for which a PPFAM was determined. This provision is similar to the temporary solution passed by the Legislature in 2015; however, this bill provides the funding solution on a permanent basis.

Appealing Assessment Limitations to the VAB

Current Situation

Sections 193.155 (homesteads), 193.1554 (non-homestead residential), and 193.1555 (non-residential), 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 appealed to the VAB. On November 12, 2015, the DOR produced an Advisory Memorandum³³ which stated that such matters could be appealed to the VAB.

Effect of the Bill

The bill creates s. 194.032(1)(a)5., F.S., to state that taxpayers have the right to appeal the implementation of these assessment caps on their property to the VAB, specifically with regard to

³¹ s. 1011.62(4), F.S.

³² s. 1011.62(4)(e)1.c., F.S.

³³ Advisory Memorandum from Steve Keller to Manual Blanco, dated November 12, 2015, on file with the Local & Federal Affairs Committee.

determinations that a change of ownership under s. 193.155(3), a change of ownership or control under ss. 193.1554(5) or 193.1555(5), or a qualifying improvement under s. 193.1555(5), has occurred.

Assessment Limitations Improperly Granted

Current Situation

Section 196.161(1)(b), F.S., provides that if an exemption was improperly granted on homestead property the taxpayer is allowed 30 days to pay any owed taxes, penalties or interest due before a lien is filed on his or her property. This statute also provides that if the exemption was improperly granted “as a result of clerical mistake of an omission by the property appraiser” the taxpayer will not be assessed penalties or interest. 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.

Regarding the assessment limitations on non-homestead property, there is no statutory authority allowing a property appraiser to waive penalties or interest when limitations are improperly granted due to an error or omission, nor is the property owner given time to pay off the assessments before a lien is filed on the property.

Effect of the Bill

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 any owed taxes, penalties or interest due before a lien is filed on his or her property.

In addition, s. 193.155(10), F.S., is amended to clarify a property appraiser may waive the penalties and interest for homestead property, and the taxpayer has the same 30 day payment window.

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.³⁴ There is no statutory requirement that the property owner 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.”³⁵ The 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. The 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.³⁶

Effect of the Bill

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 or power of attorney, unless the representative is a person listed under s. 194.034(1)(a), F.S. That list includes:

- An employee of the taxpayer or affiliated entity;

³⁴ s. 194.011(3), F.S.

³⁵ Rule 12D-9.018(4), F.A.C.

³⁶ Rule 12D-9.018(5), F.A.C.

- 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; 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.

In addition, because this bill allows 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.

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 assessment year, and a new power of attorney or written authorization shall be required for each subsequent year.

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.³⁷ 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,"³⁸ but only if the petitioner checks the appropriate box on the form.³⁹ 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.⁴⁰ 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."

Effect of the Bill

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 property record card containing information relevant to the computation of the current assessment, 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.

³⁷ s. 194.011(4)(a), F.S.

³⁸ s. 194.011(4)(b), F.S.

³⁹ s. 194.032(2)(a), F.S.

⁴⁰ The paper cards 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.

Interest Rate on Partial Payments

Current Situation

In 2011 the Legislature created s. 194.014, F.S., requiring petitioners, as a condition to file a petition with the VAB, 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.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶ 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.⁴⁷

Effect of the Bill

The bill changes the amount of interest that accrues on either partial payments or refunds 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.⁴⁸ The bill does not change the interest rate for amounts in dispute for court proceedings.

The bill also clarifies that interest on an overpayment related to a petition shall be funded proportionately by each taxing authority that was overpaid.

Rescheduling VAB Hearings

Current Situation

Prior to 2002, petitioners had no right to reschedule a VAB hearing under any circumstances. Some VABs allowed petitioners to reschedule for “good cause” but there was no consensus as to procedures

⁴¹ s. 194.014(1)(a), F.S.

⁴² s. 194.014(1)(b), F.S.

⁴³ s. 194.014(1)(c), F.S.

⁴⁴ s. 194.014(2), F.S.

⁴⁵ *Id.*

⁴⁶ s. 194.171(3), F.S.

⁴⁷ s. 194.192, F.S.

⁴⁸ FEDERAL RESERVE, H.15 SELECTED INTEREST RATES (March 9, 2015) *available at* <http://www.federalreserve.gov/releases/h15/current/> (last visited December 18, 2015).

or what constituted good cause. In 2002, the Legislature provided a right to reschedule,⁴⁹ adding a provision to s. 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 cause⁵⁰ and an unlimited number of times if good cause is shown.⁵¹ As part of this rule, the DOR created a list of circumstances that constituted good cause.⁵²

Effect of the Bill

Under the 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.” Additionally, 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.

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.”⁵³

Effect of the Bill

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

- An employee of the taxpayer or an affiliated entity;
- 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, which conforms with part II of chapter 709; or
- An uncompensated individual with written authorization.

The DOR shall adopt forms for use by a person representing a taxpayer with authority through a power of attorney or written authorization. The petitioner is not required to use the department’s form to grant the power of attorney. However, any grant of authority through power of attorney or written authorization is valid only to represent a single petitioner in a single assessment year, and must identify the parcels for which the taxpayer has granted the person the authority to represent the taxpayer.

⁴⁹ Ch. 2002-18, s. 3, Laws of Fla.

⁵⁰ Rule 12D-9.019(4)(a), F.A.C.

⁵¹ Rule 12D-9.019(4)(b), F.A.C.

⁵² *Id.*

⁵³ 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.⁵⁴ 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.⁵⁵ 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 the DOR, the clerk shall provide to the 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.

Effect of the Bill

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.⁵⁶ Before conducting hearings, a VAB must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.⁵⁷ 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.

Effect of the Bill

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.

Non-Ad Valorem Assessment Rolls

Current Situation

Current law provides a uniform method for the levy, collection, and enforcement of non-ad valorem assessments pursuant to s. 197.3632, F.S. Under that section, a local government must adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

⁵⁴ s. 194.034(2), F.S.

⁵⁵ s. 194.034(2), F.S.; *see also* rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

⁵⁶ s. 194.035, F.S.

⁵⁷ s. 194.011(5)(a)2., F.S.

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Further, by September 15 of each year, the chair of the local governing board or his or her designee must certify a non-ad valorem assessment roll to the tax collector. The local government must post the non-ad valorem assessment for each parcel on the roll.

Effect of the Bill

The bill provides an additional 10 days to adopt a non-ad valorem assessment roll at a public hearing for any county defined in s. 125.011(1), F.S. In addition, the bill provides the chair of the local governing board in such county an additional 10 days to certify the roll to the tax collector.

Section 125.011(1), F.S., defines "county" as any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.

Currently, only Miami-Dade County meets the definition of county under s. 125.011(1), F.S.

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. The DOR will also develop forms for taxpayer representatives through a power of attorney and written authorization.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is expected to impact local government revenues by +\$42.8 million, +\$3.2 million, +\$3.5 million, and +\$15.6 million in Fiscal Years 2016-17 through 2019-20, respectively. Thereafter the recurring annual local government revenue impact is expected to be +\$3.5 million. See the FISCAL COMMENTS section for more details.

2. Expenditures:

Sections 3 and 4 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.

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:

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

- Sections 3 and 4, 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 FY 2019-20 due to a speed-up in the process.
- Sections 6 and 7 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 9 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 F Y2016-17, \$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.

The Revenue Estimating Conference has not evaluated the specific language in Section 14 of the bill, which provides school districts with a funding solution when the local VAB process delays completion of the certification of the final tax roll for longer than one year. Such districts can “speed-up” the levy of unrealized RLE funds in a given year by levying a PPFAM equal to 75 percent of the district’s most recent unrealized RLE for which a PPFAM was determined. However, based on estimating conference estimates of similar language, staff estimates that it will result in a non-recurring, positive fiscal impact of \$37.7 million in FY 2016-17.