

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 21, 1998 Revised: \_\_\_\_\_

Subject: Ad Valorem Taxation (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

CS/SB 1686 provides specific statutory authority for provisions of Department of Revenue rules subject to repeal under s. 120.536, F.S. These rules all relate to administration of local ad valorem property tax.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 193.075, 197.162, 197.182, 197.243, 197.253, 197.332, 197.344, 197.413, 197.432, 197.443, 197.542, and 197.4325.

**II. Present Situation:**

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative

rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the FAC. However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they

recommended that the Legislature grant such authority. This bill addresses a number of these issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

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

#### **Rule 12D-6.003 Recreational Vehicles (Section 1.)**

##### *Present Situation:*

Rule 12D-6.003 provides for a permanently affixed recreation vehicle to be assessed as real property if the owner of the vehicle owns the land to which it is affixed, which is the same treatment available to mobile homes. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, recreational vehicles will not be eligible for taxation as real property.

##### *Effect of Proposed Changes:*

This bill amends s. 193.075, F.S., to provide conditions under which recreational vehicles are eligible for taxation a real property.

#### **Rule 12D-13.002 Discounts for Early Payment of Property Tax (Section 2.)**

##### *Present Situation:*

Rule 12D-13.002 provides for discount periods for early payment of property taxes to apply from the day a corrected tax notice is mailed if the correction is made at the taxpayer's request or by the action of the property appraiser or the tax collector. Rule 12D-13.005 provides for discount periods for early payment of property taxes to apply from the day a corrected tax notice is mailed if the correction is made pursuant to action by the value adjustment board. The Department of Revenue has identified these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal them if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, taxpayers' discount periods will be those prescribed in the statute, viz., 4 percent in November, 3 percent in December, 2 percent in January, and 1 percent in February, even if the original tax notice was subsequently changed by the property appraiser, tax collector, or value adjustment board.

##### *Effect of Proposed Changes:*

SB 1686 amends. S. 197.162, F.S., to provide taxpayers 30 days from the date a corrected notice is mailed to receive a discount rate of four percent. Thereafter the regular discount periods shall apply.

**Rule 12D-13.009(2)(a)2. Refunds (Section 3.)**

***Present Situation:***

Rule 12D-13.009(2)(a)2. provides that overpayments of property taxes of \$5.00 or less may be retained by the tax collector unless a written claim for a refund is received from the taxpayer. Overpayments greater than \$5.00 are automatically reimbursed to the taxpayer, and these refunds do not require approval by the Department of Revenue. Rule 12D-13.009(5)(b)3.b. provides that if taxes become delinquent because of a refund, the tax collector must notify the property owner that taxes are delinquent and a tax certificate shall be sold if taxes are not paid within 30 days. The Department of Revenue has identified these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend or repeal them if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, tax collectors will not have statutory or rule authority to retain small overpayments or automatically refund overpayments. Tax collectors and the Department of Revenue could see significant increases in processing costs to handle these very small transactions. Tax collectors will also have no specific time limit for selling tax certificates when delinquency arises as the result of a refund.

***Effect of Proposed Changes:***

SB 1686 amends s. 197.182, F.S., to provide that overpayments of property taxes of \$5.00 or less may be retained by the tax collector unless a written claim for a refund is received from the taxpayer. Overpayments greater than \$5.00 are automatically reimbursed to the taxpayer, and these refunds do not require approval by the Department of Revenue. It is also amended to require the tax collector to notify the property owner that taxes are delinquent because of a refund and that a tax certificate shall be sold if taxes are not paid within 30 days.

**Rule 12D-13.028(1) Tax Deferral on Homesteads (Section 4.)**

***Present Situation:***

Rule 12D-13.028(1) provides that for purposes of property tax deferral on homesteads that applicant's "household" does not include persons renting or boarding in the abode. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, tax collectors will not have statutory or rule authority not to include income of such persons when household income is calculated to determine eligibility for deferral of property tax.

***Effect of Proposed Changes:***

SB 1686 amends s. 197.243 to provide that for purposes of property tax deferral on homesteads that applicant's "household" does not include persons renting or boarding in the abode.

**Rule 12D-13.020 Tax Deferral on Homesteads-Estimating Full-Year Household Income (Section 5.)**

*Present Situation:*

Rule 12D-13.020 prescribes a formula for estimating full-year household income for purposes of determining eligibility for tax deferral on homesteads. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, tax collectors will not have statutory or rule authority to use this method of estimating full-year household income for purposes of determining eligibility for tax deferral on homesteads.

*Effect of Proposed Changes:*

SB 1686 amends s. 197.252, F.S., to prescribe a formula for estimating full-year household income for purposes of determining eligibility for tax deferral on homesteads.

**Rule 12D--13.035 Tax Deferral on Homesteads--Property Appraiser Notification Requirements (Section 6.)**

*Present Situation:*

Rule 12D--13.035 requires the property appraiser promptly to notify the tax collector of denials of homestead application and changes in ownership upon properties which have been granted tax deferral. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the property appraiser will have no requirement to make such notifications.

*Effect of Proposed Changes:*

SB 1686 amends s. 197.253, F.S., to require the property appraiser promptly to notify the tax collector of denials of homestead application and changes in ownership upon properties which have been granted tax deferral.

**Rule 12D--13.004(2) Payment of Delinquent Taxes (Section 7.)**

*Present Situation:*

Rule 12D--13.004(2) provides that the total payment of delinquent taxes must be made in order to prevent sale of a tax certificate, and that the tax collector must return delinquent payments with the statement that the payment was delinquent and that interest has accrued. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will

initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will not have statutory authority to collect accumulated penalties, interest and costs associated with delinquent taxes.

***Effect of Proposed Changes:***

This bill amends s. 197.332, F.S., to provide explicit statutory authority for the tax collector to collect accumulated penalties, interest, and costs associated with delinquent taxes.

**Rule 12D--13.040(1)(a) and (b) Notices to Lienholders (Section 8.)**

***Present Situation:***

Rule 12D--13.040(1)(a) and (b) provides that the tax collector shall send duplicate copies of tax notices to vendees of recorded contracts for deeds, and if the contract is not recorded the vendee may receive notice upon written request. The tax collector is authorized to establish cut-off dates for inclusion in the list of parties to be notified. This rule also requires the tax collector to notify lienholders or vendees of delinquent taxes. The Department of Revenue has identified parts of this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will no longer be required by statute or rule to notify these parties or to establish criteria for inclusion on the list of parties to be notified.

***Effect of Proposed Changes:***

SB 1686 amends s. 197.344, F.S., to provide that the tax collector shall send duplicate copies of tax notices to vendees of recorded contracts for deeds, and if the contract is not recorded the vendee may receive notice upon written request. The tax collector is authorized to establish cut-off dates for inclusion in the list of parties to be notified. The bill also requires the tax collector to notify lienholders or vendees of delinquent taxes.

**Rule 12D--13.036(3) Advertisement of Delinquent Property Taxes (Sections 9.)**

***Present Situation:***

Rule 12D--13.036(3) provides that the cost of advertising delinquent personal property taxes shall be added to the tax warrant and that the advertisement of delinquent taxes shall include the names and addresses of delinquent taxpayers. The Department of Revenue has identified parts of this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will not have statutory or rule authority to add the cost of advertising to the delinquent taxes.

***Effect of Proposed Changes:***

This bill amends s.197.413, F.S., to provide that the cost of advertising delinquent personal property taxes shall be added to the tax warrant.

**Rule 12D--13.045 (6) and (7) Sale of Tax Certificates (Section 10.)**

***Present Situation:***

Rule 12D--13.045 (6) and (7) allows the tax collector to require a prospective bidder for tax certificates to make a deposit prior to bidding, and provides that anyone who has previously refused to pay a bid made by or on behalf of him or herself may not bid until a deposit of 100 percent of the amount of estimated purchases is paid to the tax collector. The Department of Revenue has identified parts of this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will not have statutory or rule authority to require bidders for tax certificates to make deposits prior to bidding.

***Effect of Proposed Changes:***

This bill amends s. 197.432, F.S., to provide that tax collector shall require deposits from anyone who wishes to bid for a tax certificate, and anyone who has previously refused to pay a bid made by or on behalf of him or herself may not bid until a deposit of 100 percent of the amount of estimated purchases is paid to the tax collector.

**Rule 12D--13.057 (8) and (9) Cancellation of Void Tax Certificates (Section 11.)**

***Present Situation:***

Rule 12D--13.057 (8) and (9) provides that the county officer or taxing authority that caused an error resulting in the issuance of a void tax certificate shall be charged for the costs of advertising incurred in the sale of the certificate. It also prescribes a procedure when the owner of a tax certificate requests that the certificate be canceled but does not seek a refund. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will not have statutory or rule authority to charge for advertising void tax certificates, or a prescribed procedure when the owner of a tax certificate requests that the certificate be canceled but does not seek a refund.

***Effect of Proposed Changes:***

This bill amends s. 197.443, F.S., to provide that the county officer or taxing authority that caused an error resulting in the issuance of a void tax certificate shall be charged for the costs of advertising incurred in the sale of the certificate. It also prescribes a procedure when the owner of a tax certificate requests that the certificate be canceled but does not seek a refund.

**Rule 12D--13.063(8) Sale at Public Auction (Section 12.)**

*Present Situation:*

Rule 12D--13.063(8) gives the clerk of the court the right to refuse to accept a bid from anyone who has previously refused to honor such a bid. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the clerk shall have no statutory or rule authority to refuse a bid.

*Effect of Proposed Changes:*

This bill amends s. 197.542, F.S., giving the clerk of the court the right to refuse to accept a bid from anyone who has previously refused to honor such a bid.

**Rule 12D--13.020 Bad Checks (Section 13.)**

*Present Situation:*

Rule 12D--13.020 provides the tax collector with a procedure for dealing with bad checks received for payment of property taxes or tax certificates. The Department of Revenue has identified this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, the tax collector will have no guidance in rule or statute for dealing with bad checks.

*Effect of Proposed Changes:*

This bill creates s. 197.4325, F.S., prescribing a procedure by which the tax collector can deal with bad checks received for payment of property taxes or tax certificates.

**Section 14** provides an effective date of July 1, 1998.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.



**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None of the provisions in this bill is expected to have a significant impact on local revenue.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Ad Valorem Rules Issues	0	0	0	0	*	*	*	*
	* Insignificant							
	** Indeterminate							

**B. Private Sector Impact:**

Several provisions of this bill will benefit property owners in their dealings with the tax collector, and the bill helps maintain the integrity of the property tax system by providing clear guidelines for tax administration.

**C. Government Sector Impact:**

This bill provides statutory authority for a number of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S. If these rules are allowed to be repealed, as current law requires, the Department of Revenue will be limited in the guidance it can provide tax collectors, and tax collectors will lack statutory authority to continue current practices concerning ad valorem tax collection. This bill provides statutory authority for existing rules.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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