SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/ CS/SB 1360

SPONSOR: Finance and Taxation Committee, Comprehensive Planning, Local and Military Affairs and Senator Pruitt

SUBJECT: Property Tax Administration

DATE: February 28, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	Fournier	Johansen	FT	Favorable/CS
3.				
4.				
5.				
6.				

I. Summary:

This Proposed CS for CS 1360:

- authorizes the Department of Revenue (DOR) to specify the form used to petition the County Value Adjustment Board (VAB);
- increases from 15 to 20 the calendar days the Clerk of Court has to notify the petitioner to the VAB of his or her scheduled appearance;
- establishes a uniform timeline for petitioners and property appraisers to exchange information used in VAB hearings;
- grants DOR authority to establish, by rule, uniform procedures for VAB hearings;
- for counties with populations over 75,000, requires VABs to use special masters, and revises the qualifications for those special masters;
- authorizes DOR to update the guidelines for tangible personal property assessment upon the approval of the executive director, rather than by administrative rule, unless an objection is filed with the department;
- establishes procedures and a schedule for processing property tax refund claims;
- provides DOR flexibility in printing Truth-In-Millage (TRIM) forms to accommodate individual county needs;
- allows certain counties to levy an assessment for emergency medical services. Such county must be in a rural area of critical economic concern, have a population of fewer than 75,000 and have levied at least 10 mills of ad valorem tax for the previous fiscal year, or have previously levied an assessment for emergency medical services;
- provides that an independent special fire control district created prior to July 1, 1993, is exempt from the tax increment financing requirements of a community redevelopment agency;

- provides for exceptions to the assessment of property for back taxes, if the property has been acquired by a bona fide purchaser;
- allows an error in the notice of proposed property taxes to be corrected by an advertisement in a newspaper of general circulation, if the error involves only the date and time of public hearings;
- clarifies the assessment of low income properties that receive tax credits under federal and state housing programs;
- provides that liens of special districts and community development districts survive tax deeds; and
- provides that property that has received an agricultural classification is entitled to receive such classification until agricultural use of the land is abandoned.

This CS substantially amends the following sections of the Florida Statutes: 194.011, 194.032, 194.035, 195.062, 197.182 and 200.069, 125.271,163.387, 193.092, 196.161, 200.065, 420.5093, and 420.5099.

II. Present Situation:

Ad Valorem Taxes / Appeal of Property Valuations

Section 4, Article VII, of the State Constitution requires that all property be assessed at "just" or market value for ad valorem tax purposes. Local governments annually levy the ad valorem tax on real and tangible property as of January 1 of each year, less any authorized exemptions.

Part I of chapter 194, F.S., provides for the administrative review of property taxes. Prior to final budget hearings, property owners must be notified of the assessment of all real and tangible personal property they own. (This is referred to as the "TRIM" notice or process.) A taxpayer that objects to the assessment placed on any taxable property may request an informal conference with the property appraiser. Once the request has been received, the property appraiser or a staff member is required to meet with the taxpayer to discuss the correctness of the assessment. The informal conference is not a prerequisite to the administrative review of property assessments.

If the taxpayer is not satisfied with the facts provided by the property appraiser, he or she may file a petition to the County Value Adjustment Board (VAB). The VAB consists of three members of the governing body of the county and two members of the school board. The VAB is required to render a written decision on filed petitions. These decisions may be appealed in the circuit court. Court proceedings are de novo, and the burden of proof is upon the party initiating the appeal.

Section 194.032, F.S., establishes a schedule for VAB hearings. Subsection (2) requires the clerk of the governing body of the county to schedule appearances before the VAB. The clerk is required to notify each petitioner of the scheduled time of his or her appearance no less than 15 calendar days prior to the day of such scheduled appearance.

Chapter 194, F.S., does not provide for VAB petition forms, for uniform procedures for VAB hearings, or timelines for the reciprocal exchange of information between the parties. DOR states

that because there are no uniform procedures, “counties individually establish procedures and forms leading to confusion, particularly for taxpayers who operate in more than one county.”

VAB Special Masters

Section 194.035, F.S., authorizes, but does not require, county VABs to appoint special masters to take testimony and make recommendations to them. A special master may be either a member of The Florida Bar and knowledgeable in the area of ad valorem taxation or a designated member of a professionally recognized real estate appraisers' organization with not less than 5 years' experience in property valuation.

DOR reports that most VABs use special masters in their VAB proceedings.

DOR Manual of Instructions

Section 195.002(1), F.S., provides that DOR has general supervision of the assessment and valuation of property by county property appraisers, thus ensuring that all property will be valued according to its just valuation, as required by the State Constitution. Section 195.027(1), F.S., requires DOR to prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations are to be followed by the property appraisers, tax collectors, clerks of the circuit court, and VABs. Section 195.032, F.S., requires DOR to establish standard measures of value to be used by property appraisers in all counties to aid them in arriving at assessments of all real and tangible personal property. Section 195.062, F.S., requires DOR to prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual must contain all:

- rules and regulations;
- standard measures of value; and
- forms and instructions relating to the use of forms and maps.

While the standard measures of value are required to be adopted by rule, they do not “have the force or effect of such rules” and are to be used “only to assist tax officers in the assessment of property…” The rule adoption process takes approximately six months to complete. A DOR representative stated that by the time new standard measures of value for tangible personal property are incorporated into updated manuals, they are out-of-date.

In August 2000, the Auditor General conducted a performance audit of the administration of the Ad Valorem Tax Program of DOR. (Report No. 01-003) The report found the following:

> The Department has not complied with law requiring it to maintain a current manual of instructions containing current standard measures of value and uniform market area guidelines for county property appraisers. The Department’s existing manual of instructions included standard measures of value that were 18 years old. (p. 3)

Property Tax Refunds

Section 197.182(1), F.S., requires DOR to order refunds of property taxes paid to local governments when certain conditions are met. Subsection (2) requires DOR to forward such order to the respective county tax collector, who is then responsible for factoring the pro rata share owed to the property owner by the county, the district school board, each municipality, and the governing body of each taxing district their pro rata shares of such refund.

There are no deadlines established for the denial or approval of refunds in current law.

TRIM Notices

Chapter 200, F.S., governs the method of fixing property tax millage by local taxing authorities (TRIM process). Section 200.069, F.S., specifies the manner of the notice of the proposed property taxes to property owners. The notice shows the taxpayer's property taxes in the preceding year, his taxes for the current year if no budget changes are made, and his taxes for the current year under the proposed budgets and millage rates of the taxing authorities. The notice discloses the date, time, and location of public hearings on the local government's proposed budgets and taxes. It also encourages the taxpayer to participate in the budget process.

The TRIM notice is very specific in what information is required and the form it is to be presented in. DOR is responsible for reviewing TRIM notices to insure compliance with s. 200.069, F.S.

Non-Ad Valorem Assessments

Constitutional Preemption of Forms of Taxation to the State
Under the Florida Constitution, all taxes other than ad valorem taxes are preempted to the state except as authorized by general law.

Article VII, section 1(a), Florida Constitution, provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

Article VII, section 9(a), Florida Constitution, provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

All local government revenue sources are not taxes that require general law authorization. Valid special assessments and fees are home-rule revenue sources that do not require general law authorization. However, if a county or municipal ordinance enacting a special assessment or fee does not meet the legal sufficiency test for a valid special assessment or fee, it is considered a tax requiring general law authorization. [*Collier County v. State*, 773 So. 2d 1012 (Fla. 1999)]

Special Assessments (Background)
Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. A special assessment may be invalidated if it is classified as a tax by the courts.

The courts have defined the differences between a special assessment and a tax. Taxes are levied for the general benefit of residents and property rather than for a specific benefit to property. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax. [See *City of Boca Raton v. State*, 595 So. 2d 25 (FLA. 1992)

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use and physical characteristics of the parcel.

Another important distinction in relevant descriptions of local government revenues is between special assessments and user or service charges. While special assessments and service charges are similar in many respects, a key difference is that a special assessment is an enforceable levy while a service charge or fee is voluntary.

A special assessment may provide funding for capital expenditures or the operational costs of services provided that the property, which is subject to the assessment, derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, storm-water management services, and water and sewer line extensions.

Eligibility Requirements
The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments; for counties, section 125.01, F.S., and for municipalities, Chapter 170, F.S. Special districts must derive their authority to levy special assessments through general law or special act.

County governments are authorized, pursuant to s. 125.01(1), F.S., to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county for the purpose of providing a number of municipal-type services. Such services can be funded, in whole or in part, from special assessments. The boundaries of the taxing or benefit unit may include all or part of the boundaries of a municipality subject to the consent by ordinance of the governing body of the affected municipality. Counties may also levy special assessments for county purposes.

Pursuant to s. 125.01(5), F.S., county governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the governing bodies of the affected municipalities. Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

Municipalities also have the authority, pursuant to chapter 170, F.S., to make local municipal improvements and provide for the payment of all or any part of the costs of such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement must be so declared by resolution.

Authorized Uses
Section 125.01(1)(q), F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by county governments, via the municipal service taxing or benefit units. These may include fire protection, law enforcement, beach erosion control, recreation service and facilities, water, alternative water supplies, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services and other essential facilities and municipal services.

Section 170.01, F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by municipal governments. In addition, s. 171.201, F.S., authorizes the governing body of a municipality to levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. Under the section, the governing body of a municipality is authorized to apportion costs of such special assessments based on:

- The front or square footage of each parcel of land; or
- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Litigation
In a recent case [*SMM Properties, Inc. v. City of North Lauderdale*, 760 So.2d 998 (Fla. 4th DCA 2000)], the Fourth District Court of Appeals considered the validity of a municipal special assessment used to fund the cost of an integrated fire rescue EMS program. Following the trial court's summary judgment on behalf of the city finding that the special assessment conferred a special benefit to property, property owners appealed arguing that the assessment for emergency medical services is an invalid ad valorem tax clothed as a special assessment. The court held that it could separately analyze each of the services funded within the integrated fire services budget to insure that each component survived the required special benefits test for valid special assessments. The court found that emergency medical services provided by the city did not confer a special benefit on property, and thus the assessment for those services was an invalid ad valorem tax clothed as a special assessment.

Regarding s. 170.201, F.S., the court rejected the city's argument that this statute requires that the assessment in the case be validated. Viewing the statutory section as being designed to offer guidance to municipalities in the exercise of their authority to levy and collect assessments "against property benefited," the court noted that it read the provisions of chapter 170, F.S., as a whole as applying only to services which benefit the burdened property. The court concluded that s. 170.201, F.S., may not be properly applied to salvage the assessment for EMS services in this case because without a showing of special benefit to property, the assessment amounts to an improper tax.

Community Redevelopment Agencies

Background

In 1969, the Legislature passed the Community Redevelopment Act to provide a funding mechanism for community redevelopment efforts. Part III of chapter 163, F.S., allows a county or municipality to create a community redevelopment agency (CRA) to carry out redevelopment of slum or blighted areas. CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing.

Redevelopment Trust Funds and Tax Increment Financing

Section 163.387, F.S., provides for the creation of a redevelopment trust fund for each CRA. Funds allocated to and deposited into this fund are used by the CRA to finance any community redevelopment undertaken based on an approved community redevelopment plan. In tax increment financing, property values in a certain defined community redevelopment area are frozen by local ordinance at the assessed value for a particular base year. As redevelopment proceeds within the redevelopment area, the actual assessed value of property within the redevelopment area should increase. Taxing authorities located within the community redevelopment area are required to deposit the incremental revenue received as a result of this increase in property value in a redevelopment trust fund established by the CRA. Section 163.387, F.S., specifically provides that "the annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with undertaking and carrying out of community redevelopment under this part."

Section 163.340(2), F.S., defines "public body" or "taxing authority" to mean the state or any county, municipality, authority, special district as defined in s. 165.031(5), F.S., or other public body of the state, except a school district.

Exemptions from Tax Increment Financing

Section 163.387(2)(c), F.S., exempts the following public bodies or taxing authorities created prior to July 1, 1993, from the requirement to deposit incremental revenue into a CRA's redevelopment trust fund:

- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district, the sole available source of revenue of which is ad valorem taxes at the time an ordinance is adopted under this section.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069, F.S.

In addition, s. 163.387(2)(d), F.S., authorizes a local governing body that creates a community redevelopment agency under s. 163.356, F.S., to exempt a special district that levies ad valorem taxes within that community redevelopment area from the requirement to deposit incremental revenue into a CRA's redevelopment trust fund. The local governing body may grant the exemption either in its sole discretion or in response to the request of the special district. The subsection requires the local governing body to establish procedures by which a special district may submit a written request to be exempted within 120 days after July 1, 1993. The subsection further provides that in deciding whether to deny or grant a special district's request for exemption, the local governing body must consider specified factors.

The subsection requires the local governing body to hold a public hearing on a special district's request for exemption after public notice of the hearing is published in a newspaper having a general circulation in the county or municipality that created the community redevelopment area. The notice must describe the time, date, place, and purpose of the hearing and must identify generally the community redevelopment area covered by the plan and the impact of the plan on the special district that requested the exemption.

If a local governing body grants an exemption to a special district under this paragraph, the local governing body and the special district must enter into an interlocal agreement that establishes the conditions of the exemption, including, but not limited to, the period of time for which the exemption is granted. If a local governing body denies a request for exemption by a special district, the local governing body shall provide the special district with a written analysis specifying the rationale for such denial. This written analysis must include specified information. The decision to either deny or grant an exemption must be made by the local governing body within 120 days after the date the written request was submitted to the local governing body pursuant to the procedures established by such local governing body.

Ad Valorem Taxes

Section 193.092, F.S., provides for the assessment of property for "back taxes," or taxes on property that has escaped taxation because such property was not accounted for on the tax roll. The statute provides a mechanism for the collection of up to three years of back taxes. The tax arrears attach to the property regardless of who currently owns the property.

However, the state is exempt from the assessment of back taxes on any property it purchased unless the property is included in a list furnished by the Comptroller to the county property

appraiser as provided by law. In addition, personal property acquired in good faith is not subject to back assessments for any time prior to the time of the purchase; however, the individual or corporation that was liable for the tax remains personally liable for it.

Homestead Exemption

Section 6, Article VII of the State Constitution authorizes a $25,000 exemption from ad valorem taxation for homestead property owned and used by taxpayers as their permanent residence. Residents may only qualify for one exemption, and the exemption may not exceed the total assessed value of the property. Section 196.031, F.S., implements this constitutional provision.

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons erroneously granted a homestead exemption. Subsection (b) provides that if the property appraiser determines that a person was not entitled to a homestead exemption for any time within the prior 10 years, then the property appraiser must record a tax lien against the property. In addition to the property being liable for all taxes exempt, there is a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, penalties and interest are not due when the exemption was improperly granted as a result of a clerical error or omission by the property appraiser.

Fixing Millage and the Notice of the Proposed Property Taxes

Chapter 200, F.S., governs the method of fixing millage by local taxing authorities (TRIM process). Section 200.065, F.S., provides for the method of fixing millage and for the notice of the proposed property taxes to property owners. Subsection (13) provides a mechanism for correcting certain errors in the notice of proposed property taxes. In lieu of sending a corrected notice, upon the approval of the Department of Revenue, the property appraiser may send out a short form of the notice with the correct information. The short form is prepared and mailed at the expense of the taxing authority that caused the error.

Federal Tax Credit Program for Low-Income Housing

The Tax Reform Act of 1986 established the Federal Low Income Housing Tax Credit program (LIHTC). Each year, the U.S. Department of Treasury awards each state with an allocation authority consisting of the per capita amount and the state's share of the national pool (unused credits from other states). The Florida Housing Finance Corporation (FHFC) is the sole issuer of tax credits for Florida. From 1987 through 2001, the program has allocated tax credits for the production of 108,948 affordable rental units, valued at $8.7 billion.

Tax credits may be claimed by owners of residential rental property used for low income housing. The credit amounts are based on the cost of the building and the portion of the project that low income households occupy. The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. A percentage of the qualified basis may be claimed for 10 years as the low income housing credit. Eligible properties must comply with a number of requirements regarding tenant income levels, gross rents, and occupancy. Projects

must be held for low-income use for a minimum of 15 years under federal law. For a project to qualify for the low income housing credit, one of two tests must be met:

- at least 20 percent of the project must be occupied by households with incomes at or below 50 percent of the area median income; or
- at least 40 percent of the project must be occupied by households at or below 60 percent of area median income.

Low Income Housing Tax Credit Program/Ad Valorem Taxation

Section 420.5093, F.S., creates the State Housing Tax Credit Program for the purposes of increasing the supply of affordable housing in urban areas. It governs projects which receive corporate income tax credits under s. 220.185, F.S.

Section 420.5099, F.S., governs Florida's participation in the LIHTC program and designates the Agency as the sole issuer of tax credits in Florida. To date, the state LIHTC program has produced almost 109,000 units valued at $8.7 billion.

Ad Valorem Taxation

Article VII, section 4 of the Florida Constitution, requires "a just valuation of all property for ad valorem taxation . . ." However, the Florida Constitution does allow agricultural, high water recharge, and noncommercial recreational property to be classified by the Legislature and assessed solely on the basis of character or use. Additionally, tangible personal property and livestock that is held as inventory may be assessed at a specified percentage of its value or totally exempted from taxation.

The Florida Supreme Court has interpreted "just valuation" to mean fair market value. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965). Such an assessment may be exclusive of reasonable fees and costs of sale. *Oyster Pointe Resort Condo. v. Nolte*, 524 So. 2d 415 (Fla. 1988).

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

1. The present cash value of the property, exclusive of reasonable fees and costs of purchase;
2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of improvements;
6. The condition of the property;
7. The income from the property;
8. The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Assessment of LIHTC and State Housing Tax Credit Program Properties

Section 420.5099, F.S., requires that, in considering ad valorem assessment of affordable housing programs, neither the tax credits nor the financing generated by tax credits be considered as income to the property. It also requires property appraisers to recognize the rental income from rent restricted units in a low-income tax credit development. This provision was adopted in 1997 as part of Ch. 97-167, L.O.F, which was intended to streamline implementation of affordable housing programs in Florida. When s.420.5093, F.S., was enacted in 1999 establishing the State Housing Tax Credit Program, the same language was adopted to govern assessment of property in this program.

Survival of Interests Following a Tax Deed

Section 197.552, F.S, addresses the survival of interests following the issuance of a tax deed, as follows:

> Except as specifically provided in this chapter, no right, interest, restriction, or other covenant shall survive the issuance of a tax deed, except that a lien of record held by a municipal or county governmental unit, when such lien is not satisfied as of the disbursement of proceeds of sale under the provisions of s. 197.582, shall survive the issuance of a tax deed.

Community development districts are classified as special districts, which are constitutionally and statutorily distinct from municipalities and counties. There is no provision in statute for survival of liens of these entities.

Ad Valorem Taxation of Agricultural Land

Section 4 of art. VII of the Florida Constitution provides that agricultural land may be classified by general law and assessed for ad valorem tax purposes solely on the basis of character or use. Section 193.461, F.S., implements this constitutional provision and directs each property appraiser annually to classify for assessment purposes all lands for the county as either agricultural or nonagricultural. (Section 193.461(1), F.S.) No land can be classified as agricultural unless a return is filed on it by the owner by March 1 of each year, and the property appraiser may require the taxpayer to furnish information to establish that the land was used for a bona fide agricultural purpose. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the Department of Revenue. A county may, at the request of the property appraiser and by majority vote of the governing body, waive the requirement for an annual application for classification after the initial application is made and classification is granted. (Section 193.461(3)(a), F.S.) Any landowner whose land is denied agricultural classification may appeal to the value adjustment board. (section 193.461(2), F.S.)

Agricultural classification is limited to land which are used primarily for bona fide agricultural purposes, which means good faith commercial agricultural use of the land. In determining whether this condition is met, these factors may be considered:

1. The length of time the land has been so utilized;
2. Whether the use has been continuous;
3. The purchase price paid;
4. Size, as it relates to specific agricultural use;
5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;
6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and
7. Such other factors as may from time to time become applicable. (Section 193.461(3)(b), F.S.)

The property appraiser must reclassify land as nonagricultural if it is diverted from agricultural to a nonagricultural use, is no longer being used for agricultural purposes, or has been zoned to a nonagricultural use at the request of the owner. The board of county commissioners may also reclassify lands when there is contiguous urban development and the board finds that continued agricultural use will deter timely and orderly expansion of the community. Sale of land for a purchase price that is three or more time its agricultural assessment creates a rebuttable presumption that such land is not used primarily for bona fide agricultural purposes. (Section 193.461(4), F.S.)

"Agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production. (Section 193.461(5), F.S.)

When property has received an agricultural classification, its assessment is based solely upon its agricultural use. The property appraiser is directed to consider only the following use factors:

1. The quantity and size of the property;
2. The condition of the property
3. The present market value of the property as agricultural land;
4. The income produced by the property;
5. the productivity of the land in its present use;
6. The economic merchantability of the agricultural product; and
7. Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production. (Section 193.461(6)(a), F.S.

In 2001, the classified value of classified property statewide was 25 percent of its just value, a difference of $29.1 billion in taxable value.

III. Effect of Proposed Changes:

This CS incorporates, in part, some of the recent recommendations of DOR's Property Tax Administration Advisory Council.

Section 1 amends s. 194.011(3), F.S., to require that petitions to the VAB must be in substantially the form prescribed by DOR. However, county officers may not refuse to accept a form provided by DOR if petitioners choose to use it, notwithstanding s. 195.022, F.S. This allows private tax representatives to use DOR forms when petitioning the VAB on behalf of their clients. Section 195.022, F.S., requires DOR to prescribe and furnish all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards in administering and collecting ad valorem taxes. Counties currently may use their own forms, but only after obtaining written permission from the executive director of the DOR.

This section also creates subsection (4) to establish a timeline for the reciprocal exchange of information between petitioners and the VAB. At least 10 days before the hearing, the petitioner is required to provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the VAB and a summary of evidence to be presented by witnesses, and to mail a copy of this information to the VAB.

The property appraiser then has 5 days after the petitioner provides this information to the VAB to reciprocate by giving to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the VAB and a summary of evidence to be presented by witnesses. The property appraiser must also mail a copy of this information to the VAB. The evidence list must contain the property record card provided by the clerk.

Subsection (5) is added to require DOR to prescribe, by administrative rule, uniform procedures for VAB hearings which include requiring:

- that the clerk may not accept any petition that is not fully completed by the petitioner;
- procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032, F.S., which specifies the timetable for VAB hearings; and
- that the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

Section 2 amends s. 194.032, F.S., increases from 15 to 20 the number of calendar days the Clerk of Court has to notify the petitioners to the VAB of their scheduled appearance.

Section 3 amends s. 194.035, F.S., to require, rather than authorize, counties with populations over 75,000 to use special masters for taking testimony and making recommendations to the VAB on challenges to property appraiser's decisions of property valuations, exemptions and classifications. Current law requires special masters be members of the Florida Bar and be knowledgeable in the area of ad valorem taxation or a "designated member of a professionally recognized real estate appraisers' organization" with at least five years' experience in property valuation. This proposal would change the qualifications for special masters hearing challenges relating to valuation of real property. Such special masters must be a "state-certified" real estate appraiser with at least 5 years' experience in property valuation. (State certified appraisers are certified by the Department of Business and Professional Regulation under Part II of ch. 475, F.S.) Special masters for issues related to tangible personal property would be required to be a designated member of a professionally recognized real estate appraisers' organization with at

least 5 years' experience. The qualifications for a special master hearing challenges relating to exemptions and classifications would remain the same as is in current law.

Section 4 amends s. 195.062, F.S., to authorize DOR annually to update "guidelines" of standard measures of value to incorporate new market data into the manual of instructions for property appraisers. While the manual would continue to be adopted by rule, such guidelines may be incorporated into the manual upon the approval of the executive director of DOR, unless there is an objection filed within 30 days of such approval. If an objection is filed, the guidelines must be adopted pursuant to the rule amendment procedures required under the Administrative Procedures Act in s. 120.032, F.S.

Section 5 creates paragraphs (e) through (l) in s. 197.182(1), F.S., to establish a process and timeframe for property tax refund claims to be approved or denied. First, when DOR orders a refund of property taxes, and if funds are available, the taxpayer is entitled to receive a refund within 100 days after a claim for refund is made, unless the tax collector, property appraiser, or department states good cause for remitting the refund after that date. The deadlines imposed by this paragraph may be extended for good cause.

As in current law, taxpayer applications for refunds are made to the tax collector. When the taxpayer inadvertently contacts the property appraiser first, the property appraiser is required to refer the taxpayer to the tax collector. If a correction to the roll is required as a condition of refund, the tax collector has 30 days after the application for refund is filed to advise the property appraiser of the taxpayer's application for refund and forward the application to the property appraiser. The property appraiser then has 30 days to correct the tax roll, if such correction is permitted by law. After the 30 days, the property appraiser must advise the tax collector in writing whether or not the roll was corrected, giving the reasons why or why not. If the refund is not one that can be directly acted upon by the tax collector, for which an order from DOR is required, the tax collector must then forward the claim for refund to DOR. However, approved refunds of less than $400 must be made directly by the tax collector, without order from the department, and from undistributed funds. Such refunds may be made without approval of the various taxing authorities. DOR is then required to approve or deny all refunds within 30 days after receiving from the tax collector the claim for refund, unless good cause is stated for delaying the approval or denial beyond that date.

Court challenges contesting the denial of refund may not be brought later than 60 days after the date the tax collector issues the denial to the taxpayer, which notice must be sent by certified mail, or 4 years after January 1 of the year for which the taxes were paid, whichever is later. Finally, in computing any time period under this section, when the last day of the period is a Saturday, Sunday, or legal holiday, the period is to be extended to the next working day.

Section 6 amends s. 200.069, F.S., to allow DOR and property appraisers flexibility in printing the TRIM form, the contents and design of which are provided in this section. DOR is allowed to adjust "the spacing and placement of the form of the elements listed in this section" when it considers necessary to accommodate individual county needs. Counties are authorized to use forms they design only after approval by the executive director of DOR. Subsection (10) is deleted, consistent with these proposed changes.

Section 7 creates s. 125.271, F.S., authorizing certain counties to fund the costs of emergency medical services through the levy of a special assessment that apportions the cost among the property based on a reasonable methodology that charges a parcel in proportion to its benefits. A county is eligible to levy an assessment to fund the costs of emergency medical care if:

- it is within a rural area of critical economic concern;
- it has a population on the effective date of the act and has levied at least 10 mills of ad valorem tax for the previous fiscal year; or
- it had adopted an ordinance authorizing the imposition of an assessment for emergency medical services before January 1, 2002.

Subsection (3) of s. 125.721, F.S., provides that the authorization to levy the assessment shall be construed to be a general law authorization pursuant to ss. 1 and 9 of Art. VII of the State Constitution, and subsection (4) provides that it should be construed to ratify special assessments for emergency medical services authorized before the effective date of the section. Subsection (4) does not validate assessments in counties with litigation challenging the validity of an assessment pending on January 1, 2002.

Section 8 adds an independent special fire control district as defined in s. 191.003(5), F.S., to the list of public bodies exempt from the tax increment financing requirements of a community redevelopment agency.

Section 9 amends s. 193.092, F.S., to provide an exception to the requirement for assessing taxes to the current owner of property that has previously escaped taxation. Back taxes are not due on property that escaped taxation when the property is owned by a subsequent bona fide purchaser who purchased the property in good faith without notice of any escaped taxation or adverse claim. As with personal property under current law, the individual or corporation that was liable for the tax remains personally liable for it.

Section 10 amends s. 196.161(1)(b), F.S., to clarify that, if a homestead exemption is improperly granted as a result of a clerical mistake or *an* omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest.

Section 11 amends s. 200.065(13)(a), F.S., to revise the procedure for correcting a minor error in TRIM notices. If the error involves only the date and time of the public hearing specified on the TRIM notice, property appraisers are allowed to correct the notice by advertising the correct information, with the permission by the affected taxing authority, in a newspaper of general circulation pursuant to s. 200.065(3), F.S.

Sections 12 and 13 amend. ss. 420.5093 and 420.5099, F.S., specifying that the rental income to be recognized by the property appraiser for low-income housing in units funded by tax credits from the State Housing Tax Credit Program or the Florida Housing Finance Program is the actual rental income. In considering or using the market or cost approaches under s. 193.001, F.S., neither the costs paid for by tax credits nor the costs paid for by additional financing proceeds resulting from the property being in the program shall be included in the valuation. These sections further provide that any extended low income housing agreement which is

recorded and filed in the county where the property is located shall be deemed a land use regulation during the term of the agreement.

Section 14 amends s. 197.552, F.S., to provide that liens of special districts and community development districts survive tax deeds, as do liens of cities or counties.

Section 15 amends s. 193.461, F.S., to provide that land that has received an agricultural classification is entitled to receive such classification in any subsequent year until the agricultural use is abandoned, the land is diverted to a nonagricultural use, or the land is reclassified pursuant to s. 193.461(4), F.S. This entitlement to agricultural classification is made notwithstanding the provisions of s. 193.461(3)(a), F.S., that a tax return be filed every year in order to receive an agricultural exemption and the authorization for the property appraiser to require the taxpayer to furnish information to establish that the use of the land is bona fide agricultural.

Section 16 provides that this CS will take effect January 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By changing the assessment of certain low-income housing units, the bill reduces the municipalities' and counties' property tax base, thereby reducing their revenue-raising authority. The fiscal impact of the bill on counties and municipalities is an estimated $3.3 million in FY 2003/04. The change in agricultural classification in section 15 of this bill will also have an indeterminate negative impact on local revenue. (See Tax and Fee Impact) Therefore, the measure will require a two-thirds vote of the membership of each house of the Legislature.

As this bill imposes a requirement that counties with populations greater than 75,000 use special masters for taking testimony and making recommendations to the VAB on challenges to property appraisers' decisions of property valuations, the bill also constitutes a potential mandate as defined in Article VIII, Section 18(a) of the Florida Constitution:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or

> municipality on February 1, 1989 …the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature…

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, an amount not greater than the average statewide population for the applicable fiscal year times ten cents has been defined as an insignificant expenditure. Because most counties affected by this requirement already use special masters for their VAB hearings, the impact of the bill is likely to be insignificant, and the provisions of Art. VII, sec. 18(a) do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 7 of this proposed committee substitute authorizes certain counties to impose special assessments to fund emergency medical services. This is expected to have no fiscal impact.

Section 9 provides that, in limited situations, local governments will no longer be able to collect previously collectable taxes on property that escaped taxation. In addition, section 10 limits a local government's ability to collect penalties and interest from property owners when a homestead exemption was erroneously granted. However, because these circumstances occur infrequently, the impact of these provisions is likely to be insignificant.

Because sections 12 and 13 have the effect of reducing assessments for certain low-income housing units, the bill reduces local governments' property tax base, thereby reducing their revenue-raising authority. The fiscal impact of the bill on local governments is an estimated loss of $3.3 million in FY 2003-04.

Section 15 limits the authority of property appraisers annually to determine the agricultural classification of property, and will have an indeterminate negative impact on local revenue.

B. Private Sector Impact:

Section 2 of the proposed CS provides additional notice for a petitioner to the VAB, and section 5 of the proposed CS imposes a deadline for a property owner to contest a denial

of tax refund. Section 7 authorizes special assessments for emergency medical services which will increase the taxes and fees paid by some property owners.

C. Government Sector Impact:

Section 2 requires counties with populations over 75,000 to use special masters to hear challenges and make recommendations to the VAB. In addition, this section specifies new minimum qualifications for such special masters hearing valuation challenges. Such counties that do not currently use special masters, or use special masters that do not meet the proposed minimum qualifications, will incur additional costs associated with challenges to the VAB.

Section 7 provides a funding source for emergency medical services for counties in a rural area of critical economic concern, small counties that levied at least 10 mills in the previous fiscal year, or counties that had already adopted an ordinance authorizing such an assessment before January 1, 2002.

Section 8 exempts independent special fire control districts established before July 1, 1993 from paying any increase in their ad valorem tax revenue to a community development district.

The ability to correct an error on the notice of proposed taxes provided by section 10 will result in a cost savings to local governments. Rather than having to send out short form notices, the error may be corrected by advertising the correct information in a newspaper of general circulation. The cost differential between sending out short form notices to all affected taxpayers and advertising the correction could be substantial.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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