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: SB 2444

SPONSOR: Senator Margolis

SUBJECT: Property Taxes

DATE: March 23, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.			RI	
3.			FT	
4.			AGG	
5.			AP	
6.				

I. Summary:

This bill:

- Expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit;
- Increases certain periods for the provision of evidence and appearance schedule notices for Value Adjustment Board hearings;
- Allows the Department of Revenue (DOR) to change the manual instruction to include all settled court decisions, and periodically update the guidelines for technical changes and other changes in assessment practices;
- Repeals s. 373.516, F.S., an obsolete provision relating to valuation of rights-of-way of railroads;
- Requires that a prospective purchaser of homestead property be notified that the property will be re-assessed at just value following the sale, and consequently, the taxes may be in excess of the taxes levied in the current year; and
- Provides requirements for assessing property that is subject to a low-income housing tax credit.

This bill amends sections 193.155, 194.011, 194.032, and 195.062 of the Florida Statutes, creates sections 193.017 and 689.261 of the Florida Statutes, and repeals section 373.516 of the Florida Statutes.

II. Present Situation:

"Save Our Homes" Property Assessment Limitation

Section 4(c), Art. VII of the State Constitution limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index, not to exceed just value.[1] After any change in ownership, the property is to be assessed at just value as of January 1 of the following year. Section 193.155, F.S., implements this assessment limitation.

Section 193.155(3) defines a "change of ownership" as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection. There is no change of ownership if:

- Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:
  - The transfer of title is to correct an error; or
  - The transfer is between legal and equitable title;
- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;
- The transfer occurs by operation of law under s. 732.4015; or
- Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner.

Value Adjustment Board Hearings

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 194.011, F.S., requires a petitioner to the VAB to provide the property appraiser with a list, summary and copies of evidence to be presented at the hearing at least 10 days before the hearing. The property appraiser is required to provide the petitioner with its list, summary and copies of evidence no later than 5 days after the petitioner provides its required evidence list, summary and documentation.

[1] "Just value" has been interpreted to mean "fair market value." *Walter v. Schuler*, 176 So.2d 81

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 20 calendar days prior to the day of such scheduled appearance.

DOR Property Assessment Administration
Chapter 193, F.S., specifies procedures for county property appraisers. Section 195.002, F.S., provides the Department of Revenue (DOR) with the "general supervision of the assessment and valuation of property" to ensure that all property in the state is valued according to its just valuation.

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)

Section 373.516, F.S.
Section 373.516, F.S., requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

Disclosures at Sale
Prospective property purchasers are required by a variety of state and federal laws to be provided proper notice, prior to a sale, of potential conditions affecting the property or obligations that attach to the property. These disclosures include:

- Notice of Homeowner's Association, etc. - If the buyer is purchasing a residence in a community, before executing the sale of the property, the seller must disclose whether the buyer is
  - obligated to be a member of the community homeowners' association,
  - that there are restrictive covenants governing the use and occupancy of the property, and
  - whether or not the property is subject to special assessments to the respective municipality, county, or special district.[2]
- Condominium Resale – If the property is a condominium that is being resold, the buyer must receive specified condominium documents and other disclosures relating to rental fee obligations, failing which the buyer may cancel the contract.[3]
- Community Development District (CDD)- A prospective purchaser of a residential property in a CDD must be provided, immediately prior to the space reserved in the contract for the signature of the purchaser, a full disclosure of information concerning the public financing and maintenance of improvements to real property within the district.[4]
- Coastal Construction Zone – When property to be sold is partially or totally seaward of the coastal construction control line, the seller must provide the buyer an affidavit, or a survey, delineating the location of the line unless the buyer waives this requirement.[5]
- Radon Gas - Prospective property buyers or renters must be provided information on the potential existence and health risks related to radon gas.[6]
- Energy-Efficiency Rating - A prospective purchaser of property with a building must be provided with an informational brochure, at the time of or prior to the execution of the contract for sale, notifying the purchases of the option for an energy-efficiency rating on the building.[7]
- Lead-Based Paint Hazard - On houses build before 1978, the sale contract or a separate disclosure form must contain a Lead Warning Statement and must identify the presence of any known lead-based paint or lead-based paint hazard.[8]

Buyers of homestead property may be unaware that the taxable value of the property (assessment) will be based on the just value of the property when property changes ownership, not the "limited" assessment enjoyed under "Save Our Homes."

Florida Housing Finance Corporation / Federal Tax Credit Program for Low-Income Housing
Florida Housing Finance Corporation (FHFC) is the primary state agency responsible for encouraging the construction of affordable housing in Florida.[9] Currently, the FHFC operates

[2] s. 689.26, F.S.
[3] s. 718.503(2)(c), F.S.
[4] s. 190.009, F.S.
[5] s. 161.57(2), F.S.
[6] s. 404.056(5), F.S.
[7] s. 553.996, F.S.
[8] The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 *U.S.C.* section 4852b)
[9] Part V, ch. 420, F.S. The FHFC was created within the Department of Community Affairs (DCA) as a public corporation. It is an "entrepreneurial public corporation" that is a separate budget entity and is not subject to control, supervision, or direction by DCA. However, a contractual relationship exists between DCA and FHFC identifying performance measures for FHFC and the role of the Inspector General of DCA in analyzing and verifying the performance of the FHFC. The FHFC is overseen by a board of directors composed of the Secretary of DCA and eight members appointed by the Governor, subject

several housing programs financed by the state and federal governments, to include the Federal Tax Credit Program for Low-Income Housing. This program provides federal tax credits to developers of affordable housing. Each year, the U.S. Department of Treasury awards each state with an allocation authority consisting of the per capita amount ($1.25) and the state's share of the national pool (unused credits from other states). Section 420.5099, F.S., provides that 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.

Ad Valorem Taxation – Assessment of Low-Income Housing

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.[10] Such an assessment may be exclusive of reasonable fees and costs of sale.[11]

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[12]

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:

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to confirmation by the Senate. Members of the FHFC Board are appointed for terms of 4 years and the members elect the chair and a vice-chair annually.

[10] *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

[11] *Oyster Pointe Resort Condo. v. Nolte*, 524 So. 2d 415 (Fla. 1988).

[12] *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001). See also, *Archer v. Marshall,* 355 So.2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney,* 360 So.2d 415 (Fla. 1978). *Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

- The present cash value of the property, exclusive of reasonable fees and costs of purchase;
- 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;
- The location of the property;
- The quantity or size of the property;
- The cost of the property and the present replacement value of improvements;
- The condition of the property;
- The income from the property; and
- The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Sections 420.5093 and 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.

Sections 12 and 13 of ch. 2002-18, L.O.F., amended ss. 420.5093 and 420.5099, F.S., to further specify that when 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 may 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.

III. Effect of Proposed Changes:

Section 1 amends s. 193.155, F.S., to expand what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit. Specifically, the benefit may be retained if the same person is entitled to the exemption as was previously entitled and the transfer "adds additional owners other than a spouse to the existing ownership and the additional owners do not apply for or claim the homestead exemption."

Section 2 amends s. 194.011(4)(a), F.S., to require the petitioner's list, summary and copies of evidence to be presented at the VAB be provided at least 15 days, rather than 10 days, before the hearing. This change provides the property appraiser additional time to prepare the list of evidence to be used at the VAB hearing.

The property appraiser's list, summary and copies of evidence to be presented at the VAB is to be provided no later than 5 days *before the hearing if* the petitioner provides its required information, and *if it is requested in writing by the petitioner*. The property appraisers deadline for requested information remains the same as in current law.

Section 3 amends s. 194.032(2), F.S., to revise the notification time period to 25 calendar days prior to the day of scheduled appearance, rather than 20 calendar days as provided in current law.

Section 4 amends s. 195.062, F.S., to allow DOR to change the manual of instruction for property appraisers and other officials to include all settled court decisions, and periodically update the guidelines for technical changes and other changes in assessment practices.

Section 5 repeals s. 373.516, F.S., which requires the governing board of the South Florida Water Management District to assess benefits to rights-of-way of railroads at $4,000 per mile. In a recent audit of DOR's railroad valuation process, the Auditor General recommended that the Legislature consider repealing this provision, as it is obsolete. Representatives from DOR state that the general counsels for the various water management districts agree with this recommendation.

Section 6 creates s. 689.261, F.S., to require that a prospective purchaser of homestead property be notified that the property will be re-assessed at just value following the sale, and consequently, the taxes may be in excess of the taxes levied in the current year. This disclosure summary must be attached to the contract for sale before executing the contract for sale, unless a substantially similar disclosure is included in the contract for sale.

The bill provides the form with which the disclosure summary must substantially comply. The disclosure summary must state that:

- Ad valorem taxes for years subsequent to the sale may be in excess of the ad valorem taxes assessed at the time of sale;
- The ad valorem taxes are required to be assessed at just value on the property in the year following a change of ownership, as defined in s. 193.155(3), F.S.; and
- In the event of questions concerning valuation and ad valorem taxes, the purchaser should contact his or her county property appraiser or tax collector.

If the disclosure summary is not included in the contract for sale, the contract must refer to and incorporate (by reference) the disclosure summary and all contracts for sale must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required.

Failure to provide the required disclosure statement would render the contract for sale voidable by the purchaser. To void the contract, the purchaser must deliver to the seller, or seller's agent, a written notice of the purchaser's intent to cancel the contract. This notice to cancel must be made either within 3 days after receipt of the disclosure summary or 3 days prior to closing, whichever occurs first. The purchaser's right to void the contract terminates at closing.

Section 7 creates s. 193.017, F.S., to provide requirements for assessing property that is subject to a low-income housing tax credit. This new provision is substantially identical to ss. 420.5093(5) & (6) and 420.5099(5) & (6), F.S. Specifically, property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation "shall be assessed under s. 193.011 and consistent with s. 420.5099(5) and (6), pursuant to this section."

This section provides that:

- The tax credits granted and the financing generated by the tax credits may not be considered as income to the property;
- The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser; and
- Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.

Furthermore, if an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement must be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

Finally, any other evidence of the value of the property must be considered only in connection with the actual use of the property for affordable housing or as property subject to a low-income housing tax credit.

Section 8 provides that the bill will take effect January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (b) of the provision prohibits, with some exceptions, the Legislature from Aenacting, amending, or repealing any general law if the anticipated effect@ is to reduce county or municipal aggregate revenue generating authority as it exists on February 1, 1989. "Authority@ applies to the power to levy a tax; the vote required to levy the tax; the rate which the tax may be levied; and the base against which the tax is levied. The principal exception to these prohibitions is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision, to include laws having an insignificant fiscal impact. "Insignificant fiscal impact" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents, which is $1.7 million for FY 2004/5; the average fiscal impact, including any offsetting effects over the long term, is also considered.

Section 1 expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain or qualify for the benefit. While the fiscal impact is indeterminate, it is anticipated to be insignificant, and is thereby exempt from the constitutional mandates restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 1 expands what does not constitute a "change in ownership" for the purposes of the "Save Our Homes" property assessment limitation, thereby potentially allowing more homeowners to retain the benefit. The Revenue Impact Conference has determined that this will result in property tax revenue losses of $3.8 million in FY 2005/06, and the loss would continue to grow thereafter.

B. Private Sector Impact:

Sellers of homestead property would have to make the disclosure required by this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.