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/SB 2444

SPONSOR: Finance and Taxation Committee and Senator Margolis

SUBJECT: Property Taxes

DATE: April 20, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.			RI	Withdrawn
3.	Fournier	Johansen	FT	Fav/CS
4.			AGG	
5.			AP	
6.				

I. Summary:

This committee substitute:

- Increases the length of time before a hearing that evidence must be provided by both a petitioner to the Value Adjustment Board and the property appraiser, and requires an earlier appearance schedule notice for Value Adjustment Board hearings;
- Allows the Department of Revenue (DOR) to change the manual of instructions 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;
- Provides requirements for assessing property that is eligible for low-income housing tax credits;
- Provides that the tax collector is the defendant in any suit involving an application for tax deeds, and allows a person other than the property owner to contest its assessment for property tax purposes if that person is responsible for paying the tax and has the written permission of the property owner;
- Streamlines the process by which lands available for taxes escheat to the county where they are located, provides that submerged sovereignty lands are not considered contiguous property under s. 197.502, F.S., and provides that the search of public records required under that section shall be by direct and inverse search. Also, the tax collector is allowed to contract for higher limits of liability for title or abstract companies that perform title searches or abstracts;

- Provides that when land development rights have been restricted or conservation restrictions have been covenanted for land used for an outdoor recreation purpose, normal use and maintenance of the land for that purpose shall not be restricted; and
- Directs the Department of Revenue to use the assessed value of parcels subject to Save Our Homes in determining the level of assessment for the purpose of equalizing required local effort of school funding.

This bill amends sections 193.155, 193.501, 194.011, 194.032, 195.062, 194.181, 197.502, and 1011.62 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:

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.

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.[1]
- 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.[2]
- 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.[3]
- 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.[4]
- Radon Gas - Prospective property buyers or renters must be provided information on the potential existence and health risks related to radon gas.[5]
- 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.[6]
- 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.[7]

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.[8] Currently, the FHFC operates 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

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[1] s. 689.26, F.S.
[2] s. 718.503(2)(c), F.S.
[3] s. 190.009, F.S.
[4] s. 161.57(2), F.S.
[5] s. 404.056(5), F.S.
[6] s. 553.996, F.S.
[7] The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 *U.S.C.* section 4852b)
[8] 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 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.

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

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.[11]

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:

- The present cash value of the property, exclusive of reasonable fees and costs of purchase;

[9] *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).
[10] *Oyster Pointe Resort Condo. v. Nolte*, 524 So. 2d 415 (Fla. 1988).
[11] *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 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.

Tax Deeds

Section 194.181, F.S., provides for the parties to a tax suit. In a suit concerning the assessment of property, the plaintiff shall be the taxpayer contesting the assessment or the condominium association, cooperative association, or homeowners' association which operates the units subject to the assessment; or the property appraiser. It further provides that in any suit involving the collection of any tax on property, as well as questions relating to tax certificates or tax deeds, the tax collector shall be the defendant. The tax collector, however, does not issue tax deeds but instead prepares applications for tax deeds. (Under s. 197.542, F.S., tax deeds are issued by the clerk of the circuit court.)

Chapter 197, F.S., is the exclusive method for enforcing liens created through the sale of tax certificates for unpaid ad valorem taxes and special assessments. Section 197.502, F.S., governs the process by which holders of tax certificates for real property obtain tax deeds through the sale of the property on which tax certificates are held. Generally, certificate holders may apply for a tax deed between two to seven years after the certificate was issued. To apply for the deed, certificate holders must pay to the tax collector all amounts required to redeem or purchase all other outstanding tax certificates, including omitted, delinquent and current taxes, and respective interest, applicable to the property.

Upon payment of required outstanding certificates, taxes, and interest, the tax collector must notify the clerk of court that the obligations have been satisfied and that the following persons be notified of the impending sale of the property:

- legal title holders of the property;
- any lienholders against the property;
- any mortgagees of the property;
- any vendee of a recorded contract for deed for the property or any vendee requesting to be notified;
- any other lienholder requesting to be notified;
- any person to whom the property was assessed on the tax roll for the year in which the property was last assessed; and
- any lienholder who has recorded a lien against a mobile home located on the property described in the tax certificate, under certain conditions.

Section 197.522, F.S., provides that the clerk of court is responsible for notifying these persons prior to the sale of the property. The costs to the Clerk of Court are reimbursed by the certificate holder.

Section 197.502(7), F.S., provides for disposing of land when the county holds a tax certificate on the land. During the first 90 days after the land is placed on the list of lands available for taxes, the county may purchase the land for the opening bid. Thereafter, any person, the county, or any other governmental unit may purchase the land from the clerk for the opening bid.

Section 197.582, F.S., provides for the disbursement of proceeds from the sale of property sold to pay delinquent taxes. Subsection (2) requires that if all liens of record of governmental units have been paid in full, the balance of undistributed funds are paid to the persons required to be notified of the tax deed application and persons to be notified that the property is on the list of lands available for purchase.

Ch. 2003-284, L.O.F., created paragraph (h) of s. 197.502(4), F.S., to require that when an individual tax certificate holder applies for a tax deed on land that is either submerged land or common elements in a subdivision, the tax collector must deliver to the clerk of court the names of any owner of property that is contiguous[12] to the property described in the tax certificate. The clerk of court is responsible for notifying these persons prior to the sale of the property.

Section 197.502(7), F.S., which allows the county to purchase land when it is placed on the list of lands available for taxes requires the county to notify property owners of contiguous property available for purchase at public sale, when such property is submerged land or land that is held in common in a subdivision, that the county does not intend to purchase the property.

Section 197.502(8), F.S., provides for property that is offered for public sale but is not purchased in the tax deed process to escheat to the county in which it is located three years from the date the land is offered for sale.

Section 627.7843(3), F.S., which addresses title insurance agents, states that when an ownership and encumbrance report is supplied to a customer it "must provide for a maximum liability for

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[12] Adjacent, sharing a property boundary.

incorrect information of not more than $1,000." This statute anticipates that the customer will receive adequate protection from errors and omissions when they purchase their title insurance. When a county tax collector contracts for an ownership and encumbrance report it is not done in anticipation of the purchase of title insurance, but the tax collector is constrained by the liability cap.

Assessment of Lands Used for Outdoor Recreational or Park Purposes
Generally, property is assessed at its "highest and best use," regardless of the actual use. Chapter 193, F.S., provides several exceptions to that rule for special classes of property, which are assessed on the basis of their classified use. These are:

- S. 193.451, F.S., Annual growing of agricultural crops, nonbearing fruit trees, and nursery stock; taxability.
- S. 193.461, F.S., Agricultural lands, classification and assessment; eradication or quarantine program.
- S. 193.481, F.S., Assessment of mineral, oil, gas, and other subsurface rights.
- S. 193.501, F.S., Assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted.
- S. 193.503, F.S, Classification and assessment of historic property used for commercial or certain nonprofit purposes.
- S. 193.505, F.S., Assessment of historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted.
- S. 193.621, F.S., Assessment of pollution control devices.
- S. 193.623, F.S., Assessment of buildings renovations for accessibility of the physically handicapped.
- S. 193.625, F.S., High-water recharge lands; classification and assessment.
- S. 193.703, F.S., Reduction in assessments for living quarters of parents or grandparents.

Under s. 193.501, F.S., if the conservation restriction covenant or conveyance of land used for outdoor recreational purposes extends for at least 10 years, the property appraiser must assess the property based on its present use.

Computation of District Required Local Effort
Funds for the operation of public schools include local property taxes levied by school districts. Each year the Legislature prescribes the aggregate required local effort for all school districts collectively as an item in the General Appropriations Act. By statute, this aggregate required local effort millage rate is adjusted in each district to equalize for differences in the prior year's assessment level in each county. Section 1011.62(4)(c), F.S. directs the Department of Revenue to certify to the Commissioner of Education its most recent determination of the assessment level of the prior year's assessment roll for each county, and the Commissioner adjusts the required local effort by an equalization factor. This section further provides that the "assessment level" means the value-weighted mean assessment ratio for the county or state as a whole, as determined pursuant to s. 195.096, F.S.

The Department of Revenue, when calculating the level of assessment for residential properties, does not look at the value as capped under Art. VII, Sec. 4(c) of the Florida Constitution (Save Our Homes), but uses the just value compared to the value established by the department in its sampling to establish level of assessment. This practice has been called into question because it seems to contradict the statutory definition of "assessed value" found in s. 192.001(2), F.S. [13]

[13] (2) 'Assessed value of property' means an annual determination of the just or fair market value of an item or property or the value of the homestead property as limited pursuant to s. 4(c), Art. VII of the State Constitution or, if a property is

III. Effect of Proposed Changes:

Section 1 amends s. 194.011(4)(a), F.S., to require a petitioner to provide the evidence to be presented at the VAB 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 evidence to be presented at the VAB must be provided no later than 7 days *before the hearing if* the petitioner provides his or her required information, and *if it is requested in writing by the petitioner*. The property appraiser's deadline for requested information remains the same as in current law. If the property appraiser does not meet these requirements, the hearing will be rescheduled.

Section 2 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 3 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 4 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 5 creates s. 689.261, F.S., to require that a purchaser of residential property be notified that the property will be re-assessed following the sale, which may result in the taxes being in excess of the taxes levied in the current year. This disclosure summary must be attached to the contract for sale at or 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:

> Buyer should not rely on the seller's current property taxes as the amount of property taxes that the buyer may be obligated to pay in the year subsequent to purchase. A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes. If you have any questions concerning valuation, contact the county property appraiser's office for information.

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assessed solely on the basis of character or use or at a specific percentage of its value, pursuant to s. 4(a) or (b), Art. VII of the State Constitution, its classified use value or fractional value.

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 must include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the required disclosure summary.

Section 6 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.

Section 7 amends s. 194.181, F.S., to allow persons obligated to pay property tax to contest the assessment of the property, even if they do not own the property, under certain circumstances and with the owner's permission. It also specifies that the tax collector shall be the defendant in questions related to applications for tax deeds, not questions about the deeds themselves.

Section 8 amends s. 197.502, F.S., to streamline escheatment of property available for taxes by providing self-executing cancellation of all tax certificates, taxes, and other liens including governmental liens. It defines "contiguous" as used in ch. 197, F.S., clarifies that submerged sovereignty lands are not considered contiguous property under s. 197.502, F.S., and provides that the search of public records required under that section shall be by direct and inverse search. Finally, it allows the tax collector to contract for higher limits of liability than are allowed under s. 627.7843(3), F.S., for title or abstract companies that perform title searches or abstracts required under s. 194.502, F.S.

Section 9 amends s. 193.501, F.S. to clarify that when land development rights have been restricted or conservation restrictions have been covenanted for land used for an outdoor recreational purpose, normal use and maintenance of the land shall not be restricted.

Section 10 amends 1011.62, F.S., to direct the Department of Revenue to use the assessed value instead of the just value of residential parcels subject to Save Our Homes in determining level of assessment for equalizing required local effort.

Section 11 provides that section 10 applies to certifications of the 2004 levels of assessment and thereafter, and ratifies previous certifications.

Section 11 provides that the bill will take effect January 1, 2005.

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.

B. Private Sector Impact:

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

C. Government Sector Impact:

This bill is expected to improve property tax administration by the Department of Revenue and local tax officials, but is not expected to have significant fiscal impacts on the state or local governments.

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.