

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 880

INTRODUCER: Budget Committee and Senator Garcia

SUBJECT: Value Adjustment Boards

DATE: April 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Babin	Meyer, C.	BC	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires a value adjustment board petitioner that is challenging an assessment to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of taxes due if the taxpayer's petition is still before the taxes become delinquent on April 1.

For taxpayers that challenge the denial of a classification or exemption, or argue that the property was not substantially complete on the date of assessment, the taxpayer must pay the non-ad valorem assessments and must make a "good faith" payment of the tax. If the value adjustment board determines that the payment was grossly disproportionate to what was owed and was not made in good faith, the tax collector is to collect a 10 percent penalty.

The bill requires the value adjustment board to deny the petition by April 20th, if the required payment is not timely made.

The bill provides that if the value adjustment board determines that the petitioner owes taxes in excess of the amounts paid, the unpaid amount shall accrue interest at 12 percent per year from the date the payment was due. If the value adjustment board determines that the amount paid is

more than what is ultimately due, the excess amount paid accrues interest at the rate of 12 percent per year from the date the taxes became delinquent.

This bill provides that the provisions of the bill do not apply to petitions for tax deferrals.

This bill amends a current provision in law that provides a 4 percent tax discount for taxes that are paid within 30 days after the mailing of a tax notice resulting from value adjustment board action, even if the tax notice is mailed after the date the taxes become delinquent. This bill amends that provision to provide a 4 percent discount, but only if the corrected tax notice is mailed prior to the date the taxes become delinquent.

This bill creates s. 194.014, Florida Statutes, and substantially amends ss. 194.034 and 197.162, Florida Statutes.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.¹ Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

The State Constitution provides exceptions to the just valuation requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.²

Article VII of the Florida Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property, and permits a number of tax exemptions. These exemptions include provisions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless good cause is shown for extension.³ As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable

¹ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

² Section 196.185, F.S.

³ Section 193.1142, F.S.

value of the property and the millage rate⁴ necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.⁵ The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1 percent for municipalities, counties, school boards, and water management districts, or more than 3 percent for other taxing authorities.

Value Adjustment Board Hearings

Section 194.015, F.S., states that a value adjustment board (VAB) shall be created for each county composed of two members from the county governing board, one member from the school board and two citizen members. Section 194.035(1), F.S., requires counties with a population of more than 75,000, and allows counties with a population less than 75,000, to appoint special magistrates to take testimony and provide recommendations to the board.

The value adjustment board is required to meet no earlier than 30 and no later than 60 days after the mailing of assessment notices pursuant to s. 194.011, F.S. The value adjustment board shall meet for the following purposes:

- To hear petitions relating to assessments, pursuant to 194.011(3), F.S.;
- To hear complaints relating to homestead exemptions, pursuant to s. 196.151, F.S.;
- To hear appeals from tax exemptions that have been denied, or disputes pertaining to granted exemptions, filed pursuant to s. 196.011, F.S.; and
- To hear appeals concerning ad valorem tax deferrals and classifications.⁶

Chapter 194, F.S., provides taxpayers with the right to appeal a property appraiser's assessment, the denial of a classification, a tax exemption, or a tax deferral by filing a petition to the value adjustment board. Taxpayers must file assessment appeals within 25 days after the TRIM notice is mailed.⁷ Tax exemption or classification appeals must be filed by the taxpayer within 30 days after the property appraiser mails a notice denying an application.⁸ Appeals on denied tax

⁴ The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. See s. 200.069, F.S. See also Florida Department of Revenue website, *Local Government Property Tax Process*, available at <http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf> (last visited on Nov. 3, 2010).

⁵ Section 200.065, F.S.

⁶ Section 194.032(1)(a)1.-4., F.S.

⁷ Section 194.011(3)(d), F.S.

⁸ *Id.*

deferrals must be filed within 20 days after the tax collector mails the denial.⁹ A county value adjustment board may charge a taxpayer a nonrefundable fee up to \$15 upon filing a petition.¹⁰

After filing a petition and at least 25 days prior to the hearing, the taxpayer receives notice of the date, time, and location of the hearing along with the property record card containing relevant information that was used in computing the taxpayer's current assessment.¹¹ Prior to the hearing, the taxpayer will be given the option to exchange evidence with the property appraiser; any information that is requested by the property appraiser and not provided by the taxpayer may not be used at the hearing.¹²

At the hearing, both the petitioner and the property appraiser may be represented by an attorney or agent and shall present testimony and other evidence.¹³ The hearing shall be conducted in the manner prescribed by Department of Revenue rules, with the ability of either party to request that all witnesses be sworn in. Following the decision by the VAB, the property appraiser submits a revised certified tax roll to each taxing authority. If the taxpayer does not agree with the VAB's final decision, he or she may appeal the decision within 60 days to the circuit court pursuant to the provisions in s. 194.171(2), F.S.

2010 OPPAGA Report

In December 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report discussing the increased time and costs associated with county value adjustment board procedures.¹⁴ The report indicated that the number of petitions filed has increased significantly over the years, lengthening the value adjustment board process. These delays have created problems for both taxpayers awaiting tax refunds and local governments waiting to certify their tax rolls, which in some counties is taking up to two years. "Miami-Dade counties did not complete value adjustment board hearings for the 2008 tax year until 2010."¹⁵ These delays can also create local government budget concerns for entities, such as school districts, waiting for funding.¹⁶

The report focused on four main areas that may have attributed to the substantial increase in the number of value adjustment board appeals:

- 2009 Legislation that eliminated the 'presumption of correctness' of property appraisers (prior to this the property appraiser had to overcome this burden of proof).

⁹ Florida Department of Revenue website, *Petitions to the Value Adjustment Board* available online at <http://dor.myflorida.com/dor/property/vab/pdf/vabguide.pdf> (last visited on April 22, 2011).

¹⁰ See 194.013, F.S. "However, this fee is \$5 per parcel in cases where a petition includes multiple parcels with similar characteristics." See Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

¹¹ Section 194.032(2), F.S.

¹² Section 194.034(1)(d), F.S.

¹³ Section 194.032(1)(a), F.S.

¹⁴ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process*, Report No. 10-64 (Dec. 2010).

¹⁵ *Id.* at 5.

¹⁶ The report stated that "[a]s of November 2010, a number of school districts, including those in Miami-Dade, Duval, and Broward counties, were unable to recover \$51.8 million in uncollected taxes for the Fiscal Year 2008-2009."

- Department administrative rule changes that allow petitioners to reschedule once for no cause, and allow the board to reschedule for good cause.
- Increasing no-shows by petitioners.
- More property owners are hiring property tax professionals to assist with their value adjustment board appeals.¹⁷

Counties that have a high volume of value adjustment board appeals have tried to combat the increased workload by “creating informal dispute resolution processes, establishing performance requirements in magistrate contracts, and using innovative scheduling techniques.”¹⁸

Value adjustment board operating costs have also increased significantly in recent years. County officials report that the current \$15 filing fee does not cover value adjustment board expenses. According to officials, filing fees only covered between 5.1% and 66.6% of board expenses in the 2009 tax year.¹⁹ The report stated that VAB appeals can also have fiscal implications on local governments by reducing property values. In 2008, successful value adjustment board appeals reduced property values statewide by approximately \$7.8 billion with a net property tax reduction of approximately \$159 million (0.5 percent of total taxes levied).²⁰

In response to these findings, OPPAGA recommended that the Legislature consider one of the following options should they choose to amend the value adjustment board process:

- Shorten the process;
- Address board costs and other fiscal implications; or
- Increase accountability in the process.²¹

Property Tax Discounts

Florida has provided a discount for early payment of property taxes since 1907. Pursuant to s. 197.162, F.S., when a taxpayer pays the full amount of their property tax bill by the end of November, they receive a 4 percent discount; by the end of December, a 3 percent discount; by the end of January, a 2 percent discount; and by the end of March, a 1 percent discount. Under current law, the initial 4 percent discount deadline is extended if the original tax notice is not mailed prior to November, and it also is extended if an adjustment is made by a value adjustment board or if a deferral application is granted. If the value adjustment board makes an adjustment, the 4 percent discount is offered for 30 days following the mailing of the new tax notice.

III. Effect of Proposed Changes:

Section 1 creates s. 194.014, Florida Statutes, to require a petitioner before a value adjustment board that is challenging an assessment to pay all of the non-ad valorem assessments and to make a partial payment of at least 75 percent of the taxes due before the taxes become delinquent, less the applicable discount provided in s. 197.162, F.S.

¹⁷ *Id.* at 6-7.

¹⁸ *Id.* at 8.

¹⁹ *See id.* at 9.

²⁰ *Id.*

²¹ *Id.* at 10.

For taxpayers that challenge the denial of a classification or exemption, or argue that the property was not substantially complete on the date of assessment, the taxpayer must pay the non-ad valorem assessments and make a “good faith” payment of the tax due. If the value adjustment board determines that the payment was grossly disproportionate to what was owed and was not made in good faith, the tax collector is to collect a 10 percent penalty.

This section requires the value adjustment board to deny the petition by April 20th, if the required payment is not timely made.

This section provides that if the value adjustment board determines that the petitioner has paid less than what is ultimately due, the unpaid amount shall accrue interest at 12 percent per year from the date the payment was due. If the value adjustment board determines that the taxpayer paid more than what is ultimately due, the excess amount paid accrues interest at the rate of 12 percent per year from the date the taxes became delinquent.

This section provides that the provisions of the bill do not apply to petitions for tax deferrals.

Section 2 amends s. 194.034, F.S., to conform the statute to the provision in Section 1 of the bill, which requires that the value adjustment board deny the petition by April 20, if a taxpayer fails to make the required payment.

Section 3 amends a s. 197.162, F.S., which provides a 4 percent tax discount for taxes that are paid within 30 days after the mailing of a tax notice resulting from value adjustment board action, even if the tax notice is mailed after the date the taxes become delinquent. The bill amends the provision to provide a 4 percent discount, but only if the corrected tax notice is mailed prior to the date the taxes become delinquent.

Section 4 provides that this act shall take effect July 1, 2011, and applies to petitions filed with value adjustment boards on or after July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has estimated that the provisions of this bill will have an indeterminate positive effect on property tax collections.

B. Private Sector Impact:

As a result of this bill, value adjustment board petitioners will be required to pay all non-ad valorem assessments and pay at least 75 percent of taxes due or make a good faith payment of the taxes due if the taxpayer's petition is still pending before the value adjustment board on April 1. Taxes owed in excess of the amounts paid by the taxpayer will accrue 12 percent interest per year from the date the payment was due. If the taxpayer's payment exceeds the amount the value adjustment board ultimately determines is due, the excess amount accrues interest at 12 percent per year from the date the taxes would have become delinquent.

In addition, taxpayers will no longer receive a 4 percent tax discount for taxes that are paid within 30 days after mailing of a tax notice resulting from a value adjustment board action if the tax notice is issued after the date the taxes become delinquent.

C. Government Sector Impact:

Value adjustment boards will be required to deny a petition to the board if the petitioner fails to timely pay the required amount of taxes as prescribed under this section.

As a result of this bill, the Florida Department of Revenue will need to make amendments to the following rules: Chapter 12D-13.002 and 13.005.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Committee on April 25, 2011:

The bill was amended to:

²² Florida Department of Revenue, *Senate Bill 880 Fiscal Analysis*, at 3 (Feb. 28, 2011) (on file with the Senate Committee on Community Affairs).

- Require petitioners before a value adjustment board that challenge the denial of a classification or exemption, or argue that the property was not substantially complete on the date of assessment, must make a payment based upon good faith, rather than a 75 percent payment.
 - Require that if the value adjustment board determines that the payment was grossly disproportionate to what was owed and was not paid in good faith, the tax collector is to collect an additional 10 percent penalty.
 - Require the value adjustment board to issue, by April 20th, a notice denying the petition if the taxpayer fails to make the 75 percent or good faith payment.
- Provide that if the value adjustment board determines that the taxpayer has paid more than what is ultimately due, the overpayment earns 12 percent interest from the date the payment was due until the time a refund is made. If the taxpayer underpays, interest accrues at 12 percent from the date the payment was due until the date the payment is made. However, interest does not accrue on any amount paid in excess of the taxes due on the tax notice.
- Exclude petitions for tax deferrals from the requirement to pay a portion of the taxes levied.
- Provide that the taxpayer retains a 4 percent discount if a corrected tax notice is issued before the taxes become delinquent.

B. Amendments:

None.