

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1201 Homestead Tax Exemptions

**SPONSOR(S):** Moskowitz and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	15 Y, 0 N	Dugan	Langston
2) Local Government Affairs Subcommittee			
3) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

According to Florida Statutes, it is the duty of each property appraiser to examine each claim for homestead property tax exemption in his or her county, and grant the exemption if found to be in accordance with the law. In addition, property appraisers may, but is not required to, file a tax lien on property if the property appraiser discovers the property owner was granted a homestead exemption, but was not entitled to it, in order to collect unpaid taxes, interest, and penalties. Further, if a lien is filed, the normal tax certificate/collection process does not apply.

The bill proposes to authorize property appraisers to contract for services to examine or audit homestead tax exemptions, subject to specific terms in the contract that specify compensation and limit contact with the property owner. It further allows compensation for the contractor to be taken from penalties and back taxes collected pursuant to the contract. The bill also allows the property appraiser to retain the associated interest.

The bill also proposes to require property appraisers to file a tax lien based on fraudulent homestead claims and requires unpaid taxes, interest, and penalties related to the tax lien to be collected pursuant to the normal tax certificate process.

The bill is effective July 1, 2016.

The Revenue Estimating Conference evaluated this bill on January 29, 2016 and estimated that it will have an impact on local government revenues that is indeterminate in both magnitude and direction.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1201a.FTC

DATE: 2/3/2016

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Property Taxes in Florida**

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>2</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>3</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>4</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.<sup>5</sup>

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a homestead tax exemption.<sup>6</sup>

According to Florida Statutes, it is the duty of each property appraiser to examine each claim for homestead exemption in his or her county, and grant the exemption if found to be in accordance with the law.<sup>7</sup>

##### **Delinquent Property Taxes**

Each year, local property appraisers will certify the tax roll to the corresponding tax collector, and the tax collector will then send tax bills to all properties owing tax within his or her jurisdiction.<sup>8</sup> Property taxes are due once a year, and can be paid beginning November 1st of the assessment year.<sup>9</sup> Generally, taxes become delinquent if not paid in full as of April 1st of the year after assessment.<sup>10</sup> Delinquent taxes will accrue interest until paid,<sup>11</sup> and may accrue penalties in certain circumstances.<sup>12</sup>

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the County holds a tax certificate sale for real property located in the County on which the taxes became delinquent in that year.<sup>13</sup> A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes; however, it does not convey any property rights or ownership to the certificate holder.

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<sup>1</sup> FLA. CONST. art. VII, s. 1(a).

<sup>2</sup> Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>3</sup> FLA. CONST. art. VII, s. 4.

<sup>4</sup> FLA. CONST. art. VII, ss. 3, 4, and 6.

<sup>5</sup> s. 196.031, F.S.

<sup>6</sup> An additional homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

<sup>7</sup> s. 196.141, F.S.

<sup>8</sup> s. 197.322(2), (3), F.S.

<sup>9</sup> s. 197.333, F.S.

<sup>10</sup> s. 197.333, F.S.

<sup>11</sup> s. 197.152, F.S.

<sup>12</sup> See s. 196.161, F.S.

<sup>13</sup> s. 197.432, F.S.

The property owner has a period of two years from the date the taxes became delinquent to redeem the tax certificate by paying to the County the total due, including accrued interest.<sup>14</sup> After the two year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the County.<sup>15</sup> If tax deed auction proceedings begin, the property owner must pay all due and delinquent years, plus fees and interest to stop the sale of their property at public auction.<sup>16</sup> If the tax certificate is not redeemed or sold at auction after seven years, the tax certificate is cancelled and considered null and void.<sup>17</sup>

Under current law, when any deferred taxes, assessments, or interest are collected, the tax collector maintains a record of the payment and distributes payments received to each taxing authority in the proportionate share of the collected taxes as reflected in the tax bill.<sup>18</sup> The tax collector will make this distribution at least four times during the first two months after the tax roll comes into the tax collector's possession for collection and at least one time in all other months.<sup>19</sup>

### **Fraudulent Homestead Exemption Claims**

Current law provides that if a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.<sup>20</sup> The property owner has 30 days to pay the taxes owed, plus penalties and interest.<sup>21</sup> If not paid within 30 days of notice, the property appraiser may file a tax lien.<sup>22</sup> Even if a tax lien is filed, current administration of the law does not follow the tax certificate process described above. Instead, the tax lien remains on the property until it is paid or expires after 20 years.<sup>23</sup>

### **Proposed Changes**

The bill amends s. 196.141, F.S., to authorize the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. Agreements for such contracted services must provide that:

- the contractor may only contact a person claiming a homestead exemption with the written approval of, and in a manner prescribed by, the property appraiser;
- the contractor must notify the person claiming the homestead exemption that the contractor has been contracted by the property appraiser as a third party to examine or audit homestead tax exemptions;
- the contractor must notify the person claiming the homestead exemption that if the person has questions, the person should contact the property appraiser;
- the contractor must provide the property appraiser's contact information;
- the contractor may not:
  - Falsely impersonate a governmental official.
  - Communicate with the person between 9 p.m. and 8 a.m. in the person's time zone without the person's prior consent.
  - Suggest, communicate, or threaten the person that any money is owed.
  - Disclose or threaten to disclose any information that is not a public record to a person other than the person claiming the homestead exemption, the person's authorized representative, an adult occupant of the property receiving the homestead exemption, the property appraiser, or the property appraiser's agents or employees.

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<sup>14</sup> s. 197.502, F.S.

<sup>15</sup> Id.

<sup>16</sup> s. 197.472, F.S.

<sup>17</sup> s. 197.482, F.S.

<sup>18</sup> s. 197.383., F.S.

<sup>19</sup> s. 197.383, F.S.

<sup>20</sup> s. 196.161, F.S.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> s. 95.091(1)(b), F.S.

- Publish or post, threaten to publish or post, or cause to be published or posted to the public any individual names or list of names.
- after the contractor completes the examination or audit, the contractor must disclose the results to the property appraiser, who will determine whether the person was entitled to the homestead exemption and, if the person was not entitled to the homestead exemption, initiate proceedings pursuant to ss. 196.151 and 196.161;
- the contractor is solely responsible to the property appraiser for any claims arising from the contractor's performance; and
- the contractor's compensation shall consist solely of a portion, as specified in the agreement, of the back taxes and penalties imposed pursuant to this chapter and collected on the assessments resulting from the contractor's examination or audit, and the removal of homestead exemptions from previous and current year tax rolls.

The bill provides a property appraiser contracting for such services may receive interest, as set forth in chapter 196, imposed and collected on the taxes owed on previous and current year assessment rolls.

After distributing the compensation for the contracted services and the interest that the property appraiser retains, the tax collector must distribute any back taxes collected pursuant to chapter 197.

The bill amends s. 196.161, F.S., to clarify that a tax lien based on a fraudulent homestead claim shall (not may) be filed for the taxes, penalties, and interest that remain unpaid 30 or more days after the notice of tax lien is sent. Further, the tax lien will remain on the property until the taxes, penalties, and interest are paid in full, and the lien constitutes a first lien as set forth in s. 197.122, F.S.<sup>24</sup>

The bill provides that the unpaid taxes, interest, and penalties will be added to the next tax assessment if not paid in accordance with s. 196.161, F.S., and shall be collected in the same manner as, and in addition to, the current ad valorem taxes under chapter 197 (including the sale of tax certificates).

The bill amends s. 213.30, F.S., to allow for the collection of money by contractors pursuant to s. 196.141, F.S.<sup>25</sup>

The bill is effective July 1, 2016.

## B. SECTION DIRECTORY:

- Section 1.** Amends s. 196.141, F.S., to authorize the property appraiser to contract for services to examine or audit homestead tax exemptions; specifies compensation and minimum terms of agreement;
- Section 2.** Amends s. 196.161, F.S., to clarify the tax lien procedure for fraudulent homestead claims, as well as the collection of unpaid taxes, interest, and penalties;
- Section 3.** Amends s. 213.30, F.S., to allow for the collect of money by contractors pursuant to s. 196.141, F.S;
- Section 4.** Provides a finding of important state interest; and
- Section 5.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

<sup>24</sup> A first lien is superior to all other liens on the property, and will only be removed when discharged by payment or until barred under chapter 95.

<sup>25</sup> Under current law, s. 213.30 is the sole means by which a person who provide information to the Department of Revenue leading to certain violations of tax laws may be compensated by the department.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference evaluated this bill on January 29, 2016 and estimated that it will have an impact on local government revenues that is indeterminate in both magnitude and direction.

Local governments may, pursuant to contractual agreements between property appraisers and collection agents, collect more taxes, interest, and penalties through the use of contracted services, but will also pay for such services out of the additional revenues.

2. Expenditures:

Local governments may expend more funds to pay for contracted services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fraudulent homestead exemption perpetrators may experience an increased likelihood of being caught.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES