

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 Committee on Community Affairs

BILL: SB 474

INTRODUCER: Senator Garcia

SUBJECT: Property Tax Administration

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 474 makes various changes to the process of determining accurate assessments of property for the purpose of collecting ad valorem taxes. The bill:

- Amends the timeline for a property appraiser to appeal a decision of the Value Adjustment Board;
- Reduces situations in which an error in assessed value results in a property owner being assessed back taxes, interest, and penalties;
- Increases the types of appeals a Value Adjustment Board may hear; and
- Increases requirements to be met before a property appraiser in a large county may appeal a decision of the Value Adjustment Board.

The Revenue Estimating Conference has determined various sections of the bill will have significant negative impacts on local government revenues. See Section V., Fiscal Impact Statement.

The bill takes effect January 1, 2024.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.¹ The property appraiser annually determines the assessed or “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Property Tax Exemptions for Homesteads

Statewide Homestead Exemption

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.¹¹ An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.¹² This exemption does not apply to ad valorem taxes levied by school districts.

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *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).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.

¹² Section 196.031(1)(b), F.S.

Additional Homestead Exemptions

The Florida Constitution authorizes additional homestead exemptions, either directly through legislation or through statutory permission for local governments to enact:

- An exemption not exceeding \$50,000 in home value for any low-income senior.¹³
- An exemption of the entire assessed value of a low-income senior's homestead with a just value less than \$250,000 if he or she has maintained that homestead for not less than 25 years.^{14, 15}
- A veteran or first responder¹⁶ with a total and permanent service-connected disability is entitled to a complete exemption for property owned and used as a homestead.¹⁷
- A veteran with a total service-connected disability that confines him or her to a wheelchair is entitled to a complete exemption for property owned and used as a homestead. Upon the veteran's death, the exemption carries over to the veteran's unremarried surviving spouse.¹⁸
- A veteran disabled to a degree of 10 percent or more by misfortune or during wartime service is entitled to an exemption for any property up to \$5,000. Upon the death of the veteran, the exemption carries over to the veteran's unremarried surviving spouse.¹⁹
- The unremarried surviving spouse of a veteran or first responder who died while on active duty is entitled to a complete exemption for property owned and used as a homestead if the veteran was a permanent resident of Florida on the day he or she died.²⁰
- Certain combat-disabled veterans are entitled to a discount on their homestead property taxes.²¹

Limitation on Annual Increases in Assessments for Homestead Properties

The Florida Constitution²² provides that, for those entitled to a homestead exemption, the assessed value of the homestead shall be changed annually on January 1st of each year, but those changes in assessments shall not exceed the lesser of three percent of the prior year's assessment or the percent change in the Consumer Price Index²³ for the preceding calendar year.²⁴

Improperly Granted Homestead Exemptions

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons improperly granted a homestead exemption. Section 196.161(1)(b), F.S., provides that if the property

¹³ Implementing FLA. CONST. art. VII, s. 6(d)(1).

¹⁴ Implementing FLA. CONST. art. VII, s. 6(d)(2)

¹⁵ Taxpayers who initially receive the exemption are denied the exemption in a later year if the just value of their homestead exceeds \$250,000.

¹⁶ "First responder" in this context means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer. Section 196.081(6)(c)1., F.S.

¹⁷ Sections 196.081 and 196.102, F.S.

¹⁸ Section 196.091(1) and (3), F.S.

¹⁹ Section 196.24, F.S.

²⁰ Section 196.081(4), (6) F.S.

²¹ Section 196.082, F.S.

²² As amended by Constitutional Amendment 10 (1992), commonly referred to as the "Save Our Homes" initiative.

²³ Specifically the Consumer Price Index for All Urban Consumers, U.S. City Average, all items 1967=100, or successor reports.

²⁴ FLA. CONST. art. VII, s. 4(d)(1), implemented by section 193.155, F.S.

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 an omission by the property appraiser.

Error in Assessments

If an error is made in the assessment of homestead,²⁵ non-homestead residential,²⁶ or nonresidential²⁷ property through either material mistake of fact by the property appraiser or new construction of which the property appraiser was not aware, the property appraiser must recalculate the just and assessed values for each year beginning with the year the mistake first occurred. A property owner who has benefited from such a mistaken assessment may be subject to liability for unpaid back taxes.²⁸ If a property owner benefits from a mistakenly granted assessment limitation, they may be subject to back taxes as well as 15 percent annual interest and a 50 percent penalty.²⁹

The Value Adjustment Board Process

Each county has a Value Adjustment Board (VAB), comprised of two members of the governing body of the county, one member of the school board, and two citizen members appointed by the governing body of the county.³⁰ The county clerk acts as the clerk of the VAB.³¹ The VAB may meet for the following enumerated reasons:

- Hearing petitions relating to assessments filed pursuant to s. 194.011(3), F.S.;
- Hearing complaints relating to homestead exemptions;
- Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications;
- Hearing appeals concerning ad valorem tax deferrals and classifications; and
- Hearing appeals from determinations that a change of ownership or control, or a qualifying improvement has occurred.

A property owner may initiate an assessment valuation challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.³²

The clerk of the VAB will schedule the petition for a hearing, during which a special magistrate will hear testimony and make a recommendation to the VAB on how the petition should be

²⁵ Section 193.155(9), F.S.

²⁶ Section 193.1554(9), F.S.

²⁷ Section 193.1555(9), F.S.

²⁸ Section 193.092, F.S.

²⁹ Sections 193.155(10), 193.1554(10), and 193.1555(10), F.S.

³⁰ Section 194.015, F.S.

³¹ *Id.*

³² Section 194.011(3)(d), F.S. The TRIM (Truth in Millage) notice informs a property owner of total ad valorem tax liability as well as other information about the assessment and millage rates. With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser.

resolved.³³ The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.³⁴ The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.³⁵ The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.³⁶

Appeals of VAB Decisions

The property appraiser may appeal a decision of the VAB in circuit court if one of the following criteria are met:

- The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the VAB;
- There is a variance from the property appraiser's assessed value in excess of the following:
 - 15 percent variance from any assessment of \$50,000 or less;
 - 10 percent variance from any assessment in excess of \$50,000 but not in excess of \$500,000;
 - 7.5 percent variance from any assessment in excess of \$500,000 but not in excess of \$1 million; or
 - 5 percent variance from any assessment in excess of \$1 million; or
- There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the VAB in its decisions.

An appeal must be initiated either before the property appraiser extends the tax rolls following initial certification, or within 30 days of final recertification following an extension which occurs prior to completion of VAB hearings.³⁷

Change of Ownership

In general, property is assessed at just value as of January 1 of the year following a change of ownership or control, and assessment limitations are applied thereafter to the initial just value to limit the assessed value. For non-homestead residential and nonresidential property a change of ownership or control includes any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value.³⁸ Certain actions are specifically delineated as not triggering a change of ownership:

- Transfer of title to correct an error;
- Transfer between legal and equitable title;
- Transfer between husband and wife, including to a surviving spouse or transfer due to a dissolution of marriage;

³³ Section 194.035, F.S.

³⁴ Section 194.034(2), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 193.122(4), F.S.

³⁸ Sections 193.1554(5) and 193.1555(5), F.S.

- Cumulative transfer of ownership of the publicly traded company that controls the property due to the buying and selling of shares of the company on public exchange.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 193.122, F.S., to provide that, when a county extends tax rolls prior to the completion of VAB hearings, a property appraiser must initiate an appeal of VAB decisions within 30 days of the decision, as opposed to within 30 days of final certification of tax rolls. This gives the property appraiser a shorter timeframe in which to decide whether to appeal an individual VAB decision.

Sections 2, 3, 4, and 9 provide, in part, that if an error is made in the assessment of homestead, non-homestead residential, or nonresidential property by way of material mistake of fact by the property appraiser or due to new construction of which the property appraiser was not aware, the just and assessed value will be recalculated only in the year such an error was discovered, and the property owner will not be liable for back taxes.

Additionally, the bill provides that in the event that a property appraiser has improperly granted an assessment limitation as a result of clerical mistake or omission the property owner may not be assessed back taxes, penalty, or interest. Further, a property appraiser's error which grants an improper homestead exemption will also not result in back taxes, penalty, or interest.

Sections 3 and 4 amend ss. 193.1554 and 193.1555, F.S., respectively, to provide that, for the purposes of triggering a new assessment at just value, no change of ownership occurs if non-homestead residential or nonresidential property is transferred between an individual or individuals and an entity, or between legal entities, which results solely in a change in the method of holding title to the real property and does not create cumulative transfer of control of more than 50 percent of the ownership.

Section 5 provides that the above changes related to transfer of property are intended to be remedial and clarifying in nature and apply retroactively, but do not provide a basis for an assessment of any tax or create a right to a refund of any tax paid prior to the effective date.

Section 6 amends s. 194.011, F.S., to provide that a property owner may appeal to the VAB the granted amount of assessment limitation difference as an appeal of the new homestead property to which the limitation was carried over. Such an appeal must be filed in the tax year in which the assessment limitation difference is first applied to the new property.

Section 7 amends s. 194.032, F.S., to provide two new purposes for the VAB to meet, and therefore two new types of appeals the VAB may hear:

- Hearing appeals concerning the validity or amount of assessed back taxes.
- Hearing appeals on the issue of whether a tangible personal property return was timely filed for the purposes of contesting related assessments and waiving penalties.

³⁹ *Id.*

Section 8 amends s. 194.036, F.S., to adjust, for large counties, the variance between initial assessment and VAB decision required to allow a property appraiser to appeal the decision of the VAB. The values for counties with a population of 75,000 or less are unchanged from current law, while the values for counties with a population of more than 75,000 are provided by the bill as follows:

- 30 percent variance from any assessment of \$50,000 or less;
- 20 percent variance from any assessment in excess of \$50,000 but not in excess of \$500,000;
- 17.5 percent variance from any assessment in excess of \$500,000 but not in excess of \$1 million; or
- 15 percent variance from any assessment in excess of \$1 million.

Section 10 provides that the bill takes effect January 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The Revenue Estimating Conference reviewed sections of the bill reducing the situations in which back taxes, interest, and penalties are assessed and estimate them to reduce local government revenues by \$12.5 million beginning in 2024.⁴⁰ No exceptions to the constitutional mandates provision appear to apply to this language, and therefore the bill may be a mandate.

Additionally, the Revenue Estimating Conference reviewed other sections of the bill concerning valid appeals to a VAB and appeals by a property appraiser of VAB decisions and found them to significantly reduce local revenue beginning in 2024. However, these sections conceptually regard the process by which a proper assessment is calculated, and thus may not be considered to “reduce the authority” to raise revenues.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁰ Office of Economic and Demographic Research, *Revenue Estimating Conference Impact Results: HB 1131 / SB 474*, 261-262 (Mar. 17, 2023), available at: http://edr.state.fl.us/content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf (last visited Mar. 18, 2023).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Back Taxes, Interest, and Penalties

The Revenue Estimating Conference has determined these sections of the bill will reduce local government ad valorem receipts by \$12.5 million beginning in 2024.⁴¹

Valid VAB Appeals

The Revenue Estimating Conference has determined these sections of the bill will reduce local government ad valorem receipts by \$24.7 million beginning in 2024.⁴²

Valid Property Appraiser Appeals of VAB Decisions

The Revenue Estimating Conference has determined these sections of the bill will reduce local government ad valorem receipts by \$1.4 million beginning in 2024.⁴³

B. Private Sector Impact:

Property owners will be positively impacted to the extent that they are advantaged in property assessment when situations requiring assessment of back taxes, interest, and penalties are reduced, valid options for bringing a VAB appeal of a property appraiser's assessment are increased, and the requirements for a property appraiser to appeal a VAB decision are increased.

C. Government Sector Impact:

Local governments will be negatively impacted to the extent that they are disadvantaged in property assessment when situations requiring assessment of back taxes, interest, and penalties are reduced, valid options for bringing a VAB appeal of a property appraiser's assessment are increased, and the requirements for a property appraiser to appeal a VAB decision are increased.

The bill has no fiscal impact on state government.

⁴¹ *Id.*

⁴² *Id.* at 264-266.

⁴³ *Id.* at 270-271.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 193.122, 193.155, 193.1554, 193.1555, 194.011, 194.032, 194.036, and 196.011 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.