Finance and Tax Subcommittee

Wednesday, April 3, 2013

1:30 p.m.

Morris Hall

MEETING PACKET

Will Weatherford
Speaker

Ritch Workman
Chair

The Florida House of Representatives

Finance and Tax Subcommittee

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AGENDA

April 3, 2013
1:30 p.m.
Morris Hall

I. Call to Order/Roll Call

II. Chair's Opening Remarks

III. Consideration of the following bill(s):
CS/HB 321 Growth Management by Economic Development & Tourism Subcommittee, La Rosa

HB 421 Delinquent Real Property Taxes by Ahern

CS/HB 647 Rental Car Sales and Use Tax Surcharges by Transportation & Highway Safety Subcommittee, Nuñez

CS/HB 885 Independent Special Fire Control Districts by Local & Federal Affairs Committee, Caldwell

CS/HB 1171 St. Lucie and Martin Counties by Local & Federal Affairs Committee, Harrell

PCS for HB 1381 -- Relating to Administrative Review of Property Taxes

IV. Consideration of the following proposed committee bill(s):
PCB FTSC 13-08

V. Closing Remarks and Adjournment

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 321 Growth Management
SPONSOR(S): Economic Development & Tourism Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	9 Y, 2 N, As CS	Flegiel	West
2) Finance & Tax Subcommittee		Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Impact fees, "proportionate share," and "concurrency" are tools local governments use to manage growth and provide adequate facilities like sewer, water, parks, roads and schools to citizens. HB 321 exempts certain new development from having to comply with impact fee, concurrency or proportionate share requirements for transportation impacts for three years. The exemption lasts from July 1, 2013, through June 30, 2016. The exemption window will not apply to a new development if it is revoked by a majority vote of the local government's governing authority, alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

The Revenue Estimating Conference has not estimated the potential impact of the bill. Staff estimates that there will be a negative indeterminate impact on local government revenues. Department of Transportation staff analysis suggests that there may be a negative, but indeterminate impact on revenues the Department receives as a result of developments impacting state facilities.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water.[1] Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011 the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act.[2] Many local governments continue to exercise the option to impose concurrency on transportation and school facilities.

Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.[3] Local governments are charged with setting LOS standards within their jurisdiction, and if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development. Proportionate share requires developers to contribute to or build facilities necessary to offset a new development's impacts.[4] The State provides specific formulas local governments must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate share. Local governments may require proportionate share contributions from developers for both transportation and school impacts.[5]

Chapter 2011-139, Laws of Florida, the Community Planning Act (Act), enacted fundamental changes to growth management, including the statutory requirements for transportation concurrency and the calculation of proportionate share contributions. Most notably, the Act made transportation concurrency optional. If local governments elect to retain transportation concurrency, then their comprehensive plans must comply with the requirements included in s. 163.3180(5), F.S.

According to the Florida Department of Transportation, as of January 2013, nineteen local governments in Florida had rescinded transportation concurrency. In several instances, these local governments replaced transportation concurrency with alternative transportation mitigation strategies such as mobility fees.

Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs,

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[1] s. 163.3180(1), F.S. (2012)
[2] ch. 2011-139, s. 15, L.O.F. "The Community Planning Act."
[3] Id.
[4] Fla. Dep't of Comty. Affairs, Transportation Concurrency: Best Practices Guide pg. 64 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (3/11/2013).
[5] ss. 163.3180(5) and (6), F.S. (2012).

resources, and the local government's determination to charge the full cost of the fee's earmarked purposes.

The legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth. Due to the growth of impact fee collections and local governments' reliance on impact fees, the legislature imposes minimum standards local governments must comply with when adopting impact fees.[6]

At minimum, an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.[7]

In 2009, HB 227 amended s. 163.31801, F.S., to codify the burden of proof for impact fee ordinance challenges.[8] Subsequently, several cities and counties and the Florida Association of Counties sued the Florida House and Senate claiming the bill was unconstitutional. One of the arguments raised by the plaintiffs was that the bill was an unconstitutional mandate.[9] As a result of the litigation, the legislature revisited the same bill in 2011, passing it as SB 410 with a vote of over two-thirds of both chambers to insure the constitutionality of the bill.[10]

According to the 2012 National Impact Fee Survey,[11] 58 Florida jurisdictions have impact fees in place. The same source indicates that 41 of Florida's 67 counties had enacted impact fees which cover a variety of facilities (roads, water, wastewater, school, etc.) It should be noted that at least 17 counties had voluntarily suspended the collection of impact fees at the time of the survey. Of the counties presently suspending impact fees eight are rural or designated Rural Areas of Critical Economic Concern.

Effect of Proposed Changes

The bill creates a three year window exempting certain new development from satisfying transportation concurrency requirements and contributing to its corresponding proportionate share. The bill also exempts certain transportation impact fees from being imposed on new development.

The exemption window will apply to any new business development beginning on or after July 1, 2013, and before July 1, 2016. To qualify for the exemption, the development must be a new business development under 6,001 square feet in size and receive a certificate of occupancy by July 1, 2017.

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[6] s. 163.31801, F.S. (2012), the "Florida Impact Fee Act." Adopted by the legislature in 2006. s. 9, 2006-218, L.O.F.
[7] s. 163.31801(3), F.S. (2012).
[8] Ch. 2009-49, L.O.F.
[9] *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).
[10] Ch. 2011-149, L.O.F.
[11] Available at: www.impactfees.com/publications%20pdf/2012_survey.pdf.

The exemption window will not apply to a new development if it: is revoked by a majority vote of the local government's governing authority, alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

B. SECTION DIRECTORY:

Section 1: Creates subsection (7) in s. 163.3180, F.S., to provide that a local government may not apply transportation concurrency or require proportionate-share contribution or construction for new development before July 1, 2016, unless authorized by a majority vote of the local government's governing authority; provides exceptions for existing developments; requires certification for occupancy by July 1, 2017, to maintain exemption; provides certain requirements for new development to qualify; provides exceptions; provides that the subsection expires on July 1, 2017.

Section 2: Creates subsection (6) in s. 163.31801, F.S., to prohibit local governments from imposing impact fees on new development until July 1, 2016, unless authorized by a majority vote of the local government's governing authority; provides exceptions for existing developments; requires certification for occupancy by July 1, 2017, to maintain exemption; provides that the subsection expires on July 1, 2017.

Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not estimated the potential impact on state revenues. Department of Transportation staff analysis suggests that there may be a negative, but indeterminate impact on revenues the Department receives as a result of developments impacting state facilities.[12]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not estimated the potential impact of the bill. Staff estimates that the bill will have a negative indeterminate impact on local government revenues. The bill may impact the ability of some local governments to collect impact fees and proportionate share contributions from developers.

2. Expenditures:

   None.

[12] Department of Transportation Legislative Bill Review dated 1/29/13, stated that "[t]he prohibition on proportionate share assessments and related transportation mitigation fees may impact the revenues the Department receives as a result of developments impacting state facilities. However, the fiscal impact is indeterminate and is dependent on the amount, type and location of development activity that will occur."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lower or eliminate certain fees imposed on some types of development for a three year period.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill may have a negative fiscal impact on local government revenues. However, an exemption may apply because the fiscal impact on local governments appears to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19th, 2013, the Economic Development and Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Removes the exemption from school concurrency requirements.
- Narrows the exemption to apply only to new business development, and not residential development.
- Narrows the size of new business development qualifying for the exemption from 10,000 square feet or less to 6,000 square feet or less.
- Changes the voting procedure for local governments to overturn the exemption from requiring a two-thirds vote to a majority vote.

The analysis has been updated to reflect the strike all amendment.

A bill to be entitled

An act relating to growth management; amending s. 163.3180, F.S.; prohibiting a local government from applying transportation concurrency or requiring proportionate-share contribution or construction for new business development for a specified period; providing an exception; providing for an extension of the prohibition under certain conditions; providing for applicability; providing for future expiration; amending s. 163.31801, F.S.; prohibiting certain counties, municipalities, and special districts from imposing certain new or existing impact fees for a specified period; providing an exception; providing for an extension of the prohibition under certain conditions; providing for applicability; providing for future expiration; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 163.3180, Florida Statutes, to read:

163.3180 Concurrency.—

(7)(a) Notwithstanding any provision of law, ordinance, or resolution to the contrary, a local government may not apply transportation concurrency within its jurisdiction and may not require a proportionate-share contribution or construction for new business development before July 1, 2016, unless authorized

by the affirmative majority vote of the local government's governing authority.

(b) Paragraph (a) does not apply to proportionate-share contribution or construction assessed on existing developments before July 1, 2013.

(c) In order to maintain the exemption from transportation concurrency and proportionate-share contribution or construction pursuant to paragraph (a), a new business development must receive a certificate of occupancy by July 1, 2017. If the certificate of occupancy is not received by July 1, 2017, the local government may apply transportation concurrency and require the appropriate proportionate-share contribution or construction for the business development that would have been applied but for this subsection. The new business development must consist of 6,000 square feet or less for anything classified as other than nonresidential. Any outstanding obligation related to the proportionate-share contribution or construction runs with the land and is enforceable against any person claiming a fee interest in the land subject to that obligation.

(d) This subsection does not apply if it requires any modification to a local government's financing that would invalidate existing contracts, including debt obligations or covenants and agreements relating to bonds validated or issued by the local government.

(e) Upon written notification to the local government, a developer may elect to have the local government apply

transportation concurrency and proportionate-share contribution or construction to a business development.

(f) This subsection expires July 1, 2017.

Section 2. Subsection (6) is added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(6)(a) Notwithstanding any provision of law, ordinance, or resolution to the contrary, a county, municipality, or special district may not impose any new or existing impact fee or any new or existing fee associated with the mitigation of transportation impacts on new business development until July 1, 2016, unless authorized by the affirmative majority vote of the governing authority of the county, municipality, or special district. Any governing authority of a local government imposing an impact fee in existence on July 1, 2012, must reauthorize the imposition of the fee pursuant to this paragraph.

(b) Paragraph (a) does not apply to any impact fee or fee associated with the mitigation of transportation impacts previously enacted by law, ordinance, or resolution assessed on existing business development before July 1, 2013.

(c) In order to maintain the exemption from impact fees and fees associated with the mitigation of transportation impacts pursuant to paragraph (a), a new business development must receive a certificate of occupancy by July 1, 2017. If the certificate of occupancy is not received by July 1, 2017, the county, municipality, or special district may impose the appropriate impact fees and fees associated with the mitigation

of transportation impacts on the development that would have been applied but for this subsection. Any outstanding obligation related to impact fees and fees associated with the mitigation of transportation impacts on the development runs with the land and is enforceable against any person claiming a fee interest in the land subject to that obligation.

(d) This subsection does not apply if it requires any modification to the financing of a county, municipality, or special district that would invalidate existing contracts, including debt obligations or covenants and agreements relating to bonds validated or issued by the county, municipality, or special district.

(e) Upon notification to the county, municipality, or special district, a developer may elect to have impact fees and fees associated with the mitigation of transportation impacts imposed on a development.

(f) This subsection expires July 1, 2017.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 421 Delinquent Real Property Taxes
SPONSOR(S): Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Aldridge	Langston
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill reduces the annual interest rate on delinquent real property taxes and tax certificates from 18 percent to 12 percent.

The Revenue Estimating Conference estimated that the bill would have a negative impact on local government revenues of $1.6 million in FY 2013-14, rising to a negative $1.8 million in FY 2017-18.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 197, Florida Statutes, governs tax collections, sales and liens. Pursuant to s. 197.322, F.S., the tax collector mails a tax notice to each taxpayer within 20 days of receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls. The notice states the amount due and advises the taxpayer of discounts provided for early payment.[1] This normally occurs around November 1. Taxes that are not paid by April 1 following the year in which they were assessed are considered delinquent and begin accruing interest at the rate of 18 percent per year.[2]

On April 30, the tax collector sends an additional tax notice to each taxpayer whose payment has not been received notifying that taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.[3]

On or before June 1 or 60 days after the date of delinquency, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes which "shall be struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest."[4] Tax certificates that are not sold are issued to the county at the maximum interest rate of 18 percent.[5] The sale of the tax certificate acts as first lien on the property that is superior to all other liens; but it does not convey any property rights to the investor.[6]

A property owner can redeem a tax certificate any time before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county "all taxes, interest, costs, charges, and [any] omitted taxes" and a $6.25 fee to the tax collector.[7]

The tax certificate holder is entitled to apply for a tax deed on the property on or after April 1 of the second year following the sale of the certificate and before the expiration of seven years from issuance, by filing the certificate with the county tax collector and paying all other tax certificates held on the same property, any current taxes that are due, and certain additional fees and costs. The tax collector is authorized to collect a tax application fee of $75 at the time of application for the tax deed.[8]

If the property is not sold at the public tax deed auction held by the clerk of the circuit court, then it will be placed on the list of lands available for sale.[9] Property that is placed on the list of lands available for sale, and is not sold three years after the public auction escheats to county in which the property is located, free and clear of all liens.[10] A tax certificate that is not redeemed or for which a tax deed has not been applied for after a period of seven years is considered to be null and void.

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[1] Section 197.322 (1), F.S. *See also* s. 197.222, F.S. Taxpayers who elect to prepay their taxes by installment "based upon the estimated tax equal to the actual taxes levied upon the subject property in the prior year."
[2] *See* ss. 197.333, and 197.172, F.S. There is a minimum charge of 3 percent for delinquent taxes paid prior to the sale of a tax certificate.
[3] Section 197.343, F.S.
[4] Section 197.432(5), F.S.
[5] Section 197.172(2), F.S.
[6] Section 197.122, F.S., *see also* s. 197.432, F.S.
[7] Section 197.472, F.S.
[8] Section 197.502, F.S.
[9] *Id.*
[10] *Id.*

Chapter 197, F.S., also provides certain instances in which a taxpayer can delay paying a portion of his or her combined taxes to a future date. Sections 197.252-197.3079, F.S., allow individual tax deferrals for taxpayers who are entitled to exemptions for homestead, recreational and commercial working waterfront, and affordable rental housing property. To qualify for a tax deferral, these classified property owners are required to file an annual tax deferral application with the county tax collector on or before January 31, following the year the property was assessed.

Proposed Changes

The bill reduces the annual interest rate on delinquent real property taxes and tax certificates from 18 percent to 12 percent.

B. SECTION DIRECTORY:

Section 1: Amends s. 197.192(1) and (2), F.S., to reduce the interest rate on delinquent real property taxes and tax certificates from 18 percent to 12 percent.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimated that the bill would have a negative impact on local government revenues of $1.6 million in FY 2013-14, rising to a negative $1.8 million in FY 2017-18.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property owners would pay less interest when redeeming a tax certificate issued as a result of delinquent real property taxes. Some purchasers of tax certificates may earn less interest on those certificates.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill may have a negative fiscal impact on local government revenues. However, an exemption may apply because the fiscal impact on local governments appears to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to delinquent real property taxes; amending s. 197.172, F.S.; revising the interest rate applicable to delinquent real property taxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 197.172, Florida Statutes, is amended to read:

197.172 Interest rate; calculation and minimum.—

(1) Real property taxes shall bear interest at the rate of 12 ~~18~~ percent per year from the date of delinquency until a certificate is sold, except that the minimum charge for delinquent taxes paid before ~~prior to~~ the sale of a tax certificate shall be 3 percent.

(2) The maximum rate of interest on a tax certificate is 12 ~~18~~ percent per year. However, a tax certificate may not bear interest, and the mandatory interest as provided by s. 197.472(2) may not be levied during the 60-day period following the date of delinquency, except for the 3 percent mandatory interest charged under subsection (1).

(3) Personal property taxes shall bear interest at the rate of 18 percent per year from the date of delinquency until paid or barred under chapter 95.

(4) Interest shall be calculated from the first day of each month.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 647 Rental Car Sales and Use Tax Surcharges
SPONSOR(S): Transportation & Highway Safety Subcommittee; Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 2 N, As CS	Johnson	Miller
2) Finance & Tax Subcommittee		Flieger	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Section 212.0606(1), F.S., provides that a surcharge of $2.00 per day, or any part of a day, is imposed upon the lease or rental of a motor vehicle for hire and designed to carry less than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies to the first 30 days of the term of any lease or rental and is subject to all taxes imposed by ch. 212, F.S.

The bill creates s. 212.0606(4)(b), F.S., providing that the rental car surcharge does not apply to a motor vehicle provided to a person who is a registered member of a car-sharing service who uses the motor vehicle for a single trip of a duration of six hours or less for a fee. The bill defines the terms "car-sharing service" and "a single trip" for purposes of this exemption.

Based on an analysis by the Revenue Estimating Conference, the bill will have a -$0.2 million impact to General Revenue and an impact of -$0.8 million to state trust funds beginning in FY 2013-14 (-$0.7 million of which will be to the State Transportation Trust Fund).

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of $2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed.

The surcharge applies to only the first 30 days of the term of any lease or rental, whether or not the vehicle is licensed in Florida. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies. The surcharge is not imposed on leases or rentals to tax-exempt entities. Section 216.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80 percent to the State Transportation Trust Fund (STTF);
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Department of Transportation (DOT) district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.

For-Hire Vehicles

With limited exception, offering for lease or rent any motor vehicle in the state qualifies the vehicle as a "for-hire vehicle" under s. 320.01(15)(a), F.S.:

> "For-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."

Car-Sharing Services

Car-sharing is generally marketed as an alternative to conventional car rental and car ownership and now exists in a number of forms.

"Traditional carsharing provides members access to a vehicle for short-term daily use. Automobiles owned or leased by a carsharing operator are distributed throughout a network; members access the vehicles with a reservation and are charged per time and often per mile....

"Traditional carsharing is intended for short trips and as a supplement to public transit. Initial market entry in North America focused on the neighborhood carsharing model, characterized by a fleet of shared-use vehicles parked in designated areas throughout a neighborhood or municipality. In recent years, business models have advanced and diversified. Variations on the neighborhood model developed in North America include: business; college/university; government/institutional fleet; and public transit (carsharing provided at public transit stations or multi-modal nodes). Despite differences in target markets, these models share a similar organizational structure, capital ownership, and revenue stream.

"The next generation of shared-use vehicle services, which provide access to a fleet of shared-use vehicles, incorporates new concepts, technologies, and operational methods. These models represent innovative solutions and notable advances. They include one-way carsharing and personal vehicle sharing. One-way carsharing, also known as "free-floating" carsharing, frees users from the restriction of having to return a vehicle to the same location from which it was accessed. Instead, users leave vehicles parked at any spot within the organization's operating area, allowing for the possibility of one-way trips. The one-way model resembles more traditional forms of carsharing—except for the logistics of vehicle redistribution and the need for expanded vehicle parking.

"Personal vehicle sharing ... represents a more distinct model due to differences in organizational structure, capital stock, and liability. Personal vehicle sharing involves short-term access to privately-owned vehicles, enabling a lower operating cost and a wider vehicle distribution. ..."[1]

While car sharing began at the local, grassroots level, car-sharing services are now also provided by conventional rental car companies, such as Avis, Enterprise, and Hertz.[2]

Current Practice Relating to Surcharge

On September 17, 2012, DOR issued Technical Assistance Advisement 12A-022 in which the question presented to DOR was whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

"Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a "trip" and can last up to four consecutive days. A unique feature of Taxpayer's car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to 40 minutes, costing between $7 and $10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice."

First noting taxpayer's assertion that it is not engaged in the "traditional" rental of cars, DOR concluded that the taxpayer is clearly renting cars, is engaged in the rental of motor vehicles and, therefore, the rental car surcharge does apply. However, DOR further cited its rule, Fla. Admin. Code 12A-16.002(3)(b): "When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental."

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[1] Shaheen, Susan, Mark Mallery, and Karly Kingsley (2012). "Personal Vehicle Sharing Services in North America," *Research in Transportation Business & Management*, Vol. 3, pp.71-81.

[2] Kell, John, Jan. 2, 2013, "Avis to Buy Car-Sharing Service Zipcar," *The Wall Street Journal.*

Highlighting the fact that the taxpayer's members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and that members are charged for every trip within the same twenty-four hour period on a single daily invoice, DOR concluded that the rental car "surcharge is due from Taxpayer's members once a day, regardless of the number of trips taken by a member in a twenty-four hour period."

Proposed Changes

This bill amends s. 212.0606(4), F.S., to provide that the rental car surcharge does not apply to a motor vehicle provided to a person through a car-sharing service who uses the motor vehicle for a single trip six hours or less in duration for a fee.

The bill defines "car-sharing service" as a business with pre-approved membership criteria requirements that provides the use of a motor vehicle through a decentralized automated access for a limited time to a registered member for a fee.

The bill defines "single trip" as a trip that begins when a registered member unlocks the motor vehicle using specific membership criteria and ends when the registered member parks the motor vehicle within the defined service area for the car-sharing service and terminates the trip pursuant to the membership plan.

As a result, a car-sharing service as defined in the bill will no longer collect the $2.00 surcharge per day or any part of a day from a member renting a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether such vehicle is licensed in Florida.

The bill has an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.0606, F.S., relating to the rental car surcharge.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Based on an analysis by the Revenue Estimating Conference, the bill will have a -$0.2 million impact to General Revenue and an impact of -$0.8 million to state trust funds beginning in FY 2013-14 (-$0.7 million of which will be to the State Transportation Trust Fund).

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities that qualify under the bill's definition as a "car-sharing service" will not collect the rental car surcharge from its customers.

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

On March 20, 2013, the Transportation & Highway Safety Subcommittee adopted one amendment and reported the bill as a committee substitute. The amendment:

- Provides that car-sharing is for a single trip of six hours or less.
- Defines "car-sharing service" and "single trip."

The analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to rental car sales and use tax surcharges; amending s. 212.0606, F.S.; defining the terms "car-sharing service" and "single trip;" exempting the provision of vehicles by such services from the rental car surcharge; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(4) The surcharge imposed by this section does not apply to:

(a) A motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

(b) A motor vehicle provided to a person who is a registered member of a car-sharing service and who uses the motor vehicle for a single trip of a duration of 6 hours or less for a fee. A "car-sharing service" means a business with preapproved membership criteria requirements that provides the use of a motor vehicle through decentralized automated access for a limited time to registered members for a fee. Under this subsection, a "single trip" begins when a registered member unlocks the motor vehicle using specific membership criteria and ends when the registered member parks the motor vehicle within

the defined service area of the car-sharing service and terminates the trip pursuant to the membership plan.

Section 2. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
Representative Trujillo offered the following:

Amendment (with title amendment)

Remove lines 20-30 and insert:

registered member of a car sharing service. For purposes of this section, a "car sharing service" is a membership based organization or business which requires the payment of an application fee or membership fee and provides member access to vehicles:

1. Only at unstaffed locations;

2. 24 hours a day, seven days a week;

3. Only through decentralized automated means including, but not limited to, smartphone applications and electronic membership cards;

4. On hourly or shorter increments;

5. Only for a single trip which begins upon the initial member access into the vehicle and which ends upon the return of the vehicle to a designated area; and

Amendment No. 1

6. Without additional charges for fuel and auto insurance used during the single trip.

T I T L E A M E N D M E N T

Remove line 4 and insert:

term "car sharing service";

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Independent Special Fire Control Districts
SPONSOR(S): Local and Federal Affairs Committee, Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Lukis	Rojas
2) Finance & Tax Subcommittee		Tarich	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

HB 885 amends s. 191.009, F.S. and s. 191.011, F.S. to expand the authorization of independent special fire control districts to levy non-ad valorem assessments.

Currently, independent special fire control districts may levy non-ad valorem assessments to "construct, operate, and maintain district facilities and services." The assessments may only be levied on property that benefits from such services, and the rate of the assessments must be based on the specific benefit accruing to such benefitted property.

This bill expands the ability of independent special fire control districts to levy non-ad valorem assessments and specifies that independent special fire control districts may levy non-ad valorem assessments for the following:

- emergency rescue services;
- first response medical aid;
- emergency medical services; and
- emergency transport services.

However, the bill stipulates that if an independent special fire control district chooses to levy a non-ad valorem assessment for any of the abovementioned services, that district must cease charging an ad valorem tax for that particular service. The bill also recognizes that the above mentioned services constitute a benefit to real property.

Lastly, the bill removes the requirement that assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

The bill does not compel residents living in an independent special fire control district to pay any new non-ad valorem assessment. Section 191.009(2), F.S., requires that an independent special fire control district board receive elector approval via referendum before it levies any new non-ad valorem assessment within its district.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Independent Special Fire Control Districts

Formation of Independent Special Fire Control Districts

With limited exceptions provided in general law, independent special districts, including independent special fire control districts, may only be created by the Legislature. The creation of independent special fire control districts is governed by ch. 189, F.S., the "Uniform Special District Accountability Act of 1989," and ch. 191, F.S., the "Independent Special Fire Control District Act."

The Uniform Special District Accountability Act of 1989

Chapter 189, F.S., known as the "Uniform Special District Accountability Act of 1989," includes requirements that must be satisfied when the Legislature creates any independent special district, including independent special fire control districts created under ch. 191, F.S. Unless the Legislature has enacted a special law exempting a particular independent special district, all districts must comply with applicable provisions of ch. 189, F.S. These provisions relate to issues that must be addressed in a district's charter, election of district governing board members, bond referenda, public records and meetings, and reporting requirements.

The Independent Special Fire Control District Act

Chapter 191, F.S., is known as the "Independent Special Fire Control District Act" (the "Act"). Section 191.002, F.S., sets forth the Act's purpose, which is to establish standards and procedures concerning the operations and governance of independent special fire control districts ("districts"), and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts. Unless otherwise exempted by special or general law, the Act requires each district, whether created by special act or general law of local application, to comply with the Act. Currently, there are 57 districts in Florida.

District Governing Board

Section 191.005, F.S., prescribes procedures for the election, composition, and general administration of a district's governing board. With the exception of districts whose governing boards are appointed collectively by the Governor, the county commission, and any cooperating city within the county, the business affairs of each district shall be conducted and administered by a five-member board. Each member must be elected for a term of four years and serve until the member's successor assumes office. Each member of the board must be a qualified elector at the time he or she qualifies and continually throughout his or her term. Any board member who ceases to be a qualified elector is automatically removed pursuant to the Act.

The electors of the district must elect board members at the next general election following the effective date of a special act or general act of local application creating a new district. Except as provided by the Act, all elections must be held at the time and in the manner prescribed by law for holding general elections in accordance with s. 189.405(2)(a) and (3), F.S.

Each member must, upon assuming office, take and subscribe to the oath of office prescribed by s. 5(b), Art. II of the State Constitution and s. 876.05, F.S.

General Powers

Section 191.006, F.S., sets forth the following general powers of a district, which may be exercised by a majority vote of the board:

- To sue and be sued in the name of the district, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To provide for a pension or retirement plan for its employees. In accordance with general law, the board may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.
- To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- To borrow money and accept gifts, to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith, and to hold, use, sell, and dispose of such moneys or property for any district purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of other documents and records of the district. The board may also adopt ordinances and resolutions that are necessary to conduct district business, if such ordinances do not conflict with any ordinances of a local general purpose government within whose jurisdiction the district is located. Any resolution or ordinance adopted by the board and approved by referendum vote of district electors may only be repealed by referendum vote of district electors.
- To maintain an office at places it designates within a county or municipality in which the district is located and appoint an agent of record.
- To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by this act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by this act and to use such easement, dedication, or reservation for any purpose authorized by this act consistent with applicable adopted local government comprehensive plans and land development regulations.
- To lease as lessor or lessee to or from any person any facility or property of any nature for the use of the district when necessary to carry out the district's duties and authority under this act.
- To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, taxes and assessments, warrants, notes, or other evidence of indebtedness, and mortgage real and personal property when necessary to carry out the district's duties and authority under this act.
- To charge user and impact fees authorized by resolution of the board, in amounts necessary to conduct district activities and services, and to enforce their receipt and collection in the manner prescribed by resolution and authorized by law. However, the imposition of impact fees may only be authorized as provided by general law.
- To exercise the right and power of eminent domain, pursuant to general law, over any property within the district, except municipal, county, state, special district, or federal property used for a public purpose, for the uses and purposes of the district relating solely to the establishment and maintenance of fire stations and fire substations, specifically including the power to take

easements that serve such facilities consistent with applicable adopted local government comprehensive plans and land development regulations.

- To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by this act.
- To impose and foreclose non-ad valorem assessment liens as provided by this act or to impose, collect, and enforce non-ad valorem assessments pursuant to general law.
- To select as a depository for its funds any qualified public depository as defined by general law which meets all the requirements of ch. 280, F.S., and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.
- To provide adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel.
- To organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services, or district administration.

Special Powers

Section 191.008, F.S., requires districts to provide for fire suppression and prevention by establishing and maintaining fire stations and fire substations and by acquiring and maintaining firefighting and fire protection equipment deemed necessary to prevent or fight fires. All construction must be in compliance with applicable state, regional, and local regulations, including adopted comprehensive plans and land development regulations.

This section grants districts the following special powers relating to facilities and duties authorized by the Act:

- To establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to general law and any certificate of public convenience and necessity or its equivalent issued thereunder.
- To employ, train, and equip such personnel, and train, coordinate, and equip such volunteer firefighters, as are necessary to accomplish the duties of the district. The board may employ and fix the compensation of a fire chief or chief administrator. The board must prescribe the duties of such person, which include supervision and management of the operations of the district and its employees and maintenance and operation of its facilities and equipment. The fire chief or chief administrator may employ or terminate the employment of such other persons, including, without limitation, professional, supervisory, administrative, maintenance, and clerical employees, as are necessary and authorized by the board. The board must provide the compensation and other conditions of employment of the officers and employees of the district.
- To conduct public education to promote awareness of methods to prevent fires and reduce the loss of life and property from fires or other public safety concerns.
- To adopt and enforce fire safety standards and codes and enforce the rules of the State Fire Marshal consistent with the exercise of the duties authorized by chs. 553 or 633, F.S., with respect to fire suppression, prevention, and fire safety code enforcement.
- To conduct arson investigations and cause-and-origin investigations.
- To adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency.
- To contract with general purpose local government for emergency management planning and services.

Present Situation

Section 191.009, F.S., authorizes independent special fire control districts to levy ad valorem taxes, non-ad valorem assessments, user charges, and impact fees. HB 885 changes provisions relating to non-ad valorem assessments.

Non-ad Valorem Assessments

A district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. Sections 191.009 and 119.011, F.S., lay out the following provisions and procedures related to non-ad valorem assessments:

- Non-ad valorem assessments may be levied only on benefited real property at a rate of the cost thereof.[1]
- The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures.[2]
- Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous five years.[3]
- Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition.[4]
- Proposed non-ad valorem assessment increases that exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last five years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district.[5]
- The referendum on the first-time levy of an assessment must include a notice of the future non-ad valorem assessment rate increases permitted by the Act without a referendum.[6]
- Non-ad valorem assessments must be imposed, collected, and enforced pursuant to general law.[7]

"Assessment" vs. "Tax"

The Florida Supreme Court has held that a legally imposed specialassessment is not a tax.[8] In *Klemm v. Davenport*, the Florida Supreme Court explained the difference as follows:

> A 'tax' is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A 'special assessment' is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon the theory that that portion of the community which is required to bear it receives

[1] Section 191.011, F.S.
[2] *Id.*
[3] Section 191.009, F.S.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] There is a technical difference with "non-ad valorem" assessments and "special" assessments—unlike special assessments, non-ad valorem assessments will usually be filed as a lien against property if not paid. However, this difference is not meaningful for purposes of this analysis.

> some special or peculiar benefit in the enhancement of value of property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially.[9]

More simply, however, special assessments require the following two characteristics that are not necessarily required by a tax: [10]

1) "the property assessed must derive a special benefit from the service provided;" and
2) "the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit."

In order to determine whether a special benefit is conferred on property by the provision of a service, a determination is made as to whether there is a "logical relationship" between the services provided and the benefit to real property.[11] Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include, but are not limited to, the following:

- garbage disposal;[12]
- sewer improvements;[13]
- fire protection;[14]
- fire and rescue services;[15]
- street improvements;[16]
- parking facilities;[17] and
- downtown redevelopment.[18]

Conversely, Florida courts have acknowledged that the following services do *not* specifically benefit real property (emphasis added):

- law enforcement services;[19]
- indigent health care;[20] and
- emergency medical services.[21]

However, Florida courts have also held that the judiciary traditionally defers to the legislative body's determination of special benefits.[22] In *Sarasota County v. Sarasota Church of Christ,* the Florida Supreme Court held that: "[t]he standard is the same for both prongs; that is, the legislative determination as to the existence of special benefits and as to the apportionment of costs of those benefits should be upheld unless the determination is arbitrary."[23]

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[9] 129 So. 904, 907-08 (1930).
[10] *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).
[11] *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667, 669 (Fla. 1997) (citing *Whisnant v. Stringfellow*, 50 So. 2d 885 (Fla. 1951)).
[12] *E.g., Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997).
[13] *E.g., Meyer v. City of Oakland Park*, 219 So. 2d 417 (Fla. 1969).
[14] *E.g., South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973).
[15] *E.g., Lake County v. Water Oak Management Corp.*, 695 So. 2d 667 (Fla. 1997).
[16] *E.g., Bodner v. City of Coral Gables*, 245 So. 2d 250 (Fla. 1971).
[17] *City of Naples v. Moon*, 269 So. 2d 355 (Fla. 1972).
[18] *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).
[19] *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667, 670 (Fla. 1997).
[20] *Id.*
[21] *City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002).
[22] *Id.*at 347.
[23] 667 So. 2d 180, 184 (Fla. 1995).

In 2002, for example, the Florida legislature created s. 125.271, F.S., which allows certain counties to levy special assessments for emergency medical services.

Effect of Proposed Changes

HB 885 amends s. 191.009, F.S. and s. 191.011, F.S. to expand independent special fire control districts' power of levying non-ad valorem assessments.

Specifically, the bill provides that districts may levy such assessments to construct, operate, and maintain district facilities and services "*provided pursuant to the general powers listed in s. 191.006, the special powers listed in s. 191.008, any applicable general laws of local application, and a district's enabling legislation* (emphasis added) . . ." In particular, the bill provides that these district services include the following:

- emergency rescue services;
- first response medical aid;
- emergency medical services; and
- emergency transport services.

However, the bill stipulates that if an independent special fire control district chooses to levy a non-ad valorem assessment for any of the abovementioned services, that district must cease charging an ad valorem tax for that particular service.

The bill also expressly articulates a legislative determination that emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitute a benefit to real property "the same as any other improvement performed by a district, such as fire suppression services, fire protection services, and fire prevention services."

Lastly, the bill removes the requirement that assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

The bill does not compel residents living in an independent special fire control district to pay any new non-ad valorem assessment. Section 191.009(2), F.S., requires that an independent special fire control district board receive elector approval via referendum before it levies any new non-ad valorem assessment within its district.

B. SECTION DIRECTORY:

Section 1: Amends s. 191.009, F.S.; authorizing under a certain condition that independent special fire control districts may levy non-ad valorem assessments for emergency rescue services, first response medical aid, emergency medical services, and emergency transport services; providing that emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitute a benefit to real property.

Section 2: Amends s. 191.011, F.S.; removing the requirement that non-ad valorem assessments be levied on benefitted property and the requirement that the rate of the assessments be based on the specific benefit accruing to such benefitted property.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill authorizes an additional source of income for independent special fire control districts. However, as mentioned above, s. 191.009(2), F.S., requires electors in a district to approve by referendum any first-time levy of a non-ad valorem assessment.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2013, the Local and Federal Affairs Committee adopted one amendment to the bill.

- The amendment stipulates that if an independent special fire control district levies a non-ad valorem assessment for emergency rescue services, first response medical aid, emergency medical services, or emergency transport services, the district must cease charging an ad valorem tax for that particular service.

This analysis has been updated to reflect this amendment.

A bill to be entitled

An act relating to independent special fire control districts; amending s. 191.009, F.S.; clarifying provisions that authorize a district to levy non-ad valorem assessments to construct, operate, and maintain specified district facilities and services; providing that if a district levies non-ad valorem assessments for certain services, the district must cease to levy ad valorem assessments for those services; amending s. 191.011, F.S.; revising provisions relating to district authority to provide for the levy of non-ad valorem assessments on lands within the district rather than benefited real property; eliminating provisions relating to rate of assessment for benefited real property, to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 191.009, Florida Statutes, is amended to read:

191.009 Taxes; non-ad valorem assessments; impact fees and user charges.—

(2) NON-AD VALOREM ASSESSMENTS.—

(a) A district may levy non-ad valorem assessments as defined in s. 197.3632 to construct, operate, and maintain those district facilities and services provided pursuant to the general powers listed in s. 191.006, the special powers listed

in s. 191.008, any applicable general laws of local application, and a district's enabling legislation. The rate of such assessments must be fixed by resolution of the board pursuant to the procedures contained in s. 191.011. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous 5 years. Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition. Proposed non-ad valorem assessment increases that ~~which~~ exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last 5 years, or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district. The referendum on the first-time levy of an assessment shall include a notice of the future non-ad valorem assessment rate increases permitted by this act without a referendum. Non-ad valorem assessments shall be imposed, collected, and enforced pursuant to s. 191.011.

(b) 1. The non-ad valorem assessments in paragraph (a) can be used to fund emergency rescue services, first response medical aid, emergency medical services, and emergency transport services. However, if a district levies a non-ad valorem assessment for emergency rescue services, first response medical

aid, emergency medical services, or emergency transport services, the district shall cease collecting ad valorem taxes under subsection (1) of this section for that particular service.

2. It is recognized that the provision of emergency rescue services, first response medical aid, emergency medical services, and emergency transport services constitutes a benefit to real property the same as any other improvement performed by a district, such as fire suppression services, fire protection services, and fire prevention services.

Section 2. Subsection (1) of section 191.011, Florida Statutes, is amended to read:

191.011 Procedures for the levy and collection of non-ad valorem assessments.—

(1) A district may provide for the levy of non-ad valorem assessments under this act on the lands within the district for ~~and real estate benefited by~~ the exercise of the powers authorized by this act, or any part thereof, for all or any part of the cost thereof. ~~Non-ad valorem assessments may be levied only on benefited real property at a rate of assessment based on the special benefit accruing to such property from such services or improvements.~~ The district may use any assessment apportionment methodology that meets fair apportionment standards.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1171 St. Lucie and Martin Counties
SPONSOR(S): Local & Federal Affairs Committee and Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Nelson	Rojas
2) Finance & Tax Subcommittee		Aldridge	Langston

SUMMARY ANALYSIS

In 2012, the Florida Legislature passed a bill that revised the boundaries of Martin and St. Lucie counties effective July 1, 2013, upon its approval by a majority vote of the qualified electors residing in the area affected. This legislation expanded the boundaries of Martin County and contracted the boundaries of St. Lucie County, thus transferring an enclave known as "Beau Rivage."

The bill also provided for the transfer of all public roads and associated public rights-of-way within the subject property from St. Lucie County to Martin County. Additionally, the bill directed the governing bodies of the two counties to enter into an interlocal agreement no later than May 1, 2013, to provide a "financially feasible plan" for transfer of services, personnel and public infrastructure. This interlocal agreement also is required to include compensation for the value of infrastructure investments by St. Lucie County in the transferred property minus depreciation, if any. Until FY 2022-23, Martin County is required to distribute the tax and assessment revenue amount that would have been generated in Beau Rivage, with annual cumulative deductions of 10 percent, to St. Lucie County.

CS/HB 1171 revises provisions for the temporary distributions from Martin County to St. Lucie County of tax and assessment revenue collected in Beau Rivage as follows:

- Clarifies that the calculations will use the total tax and assessment revenue that would have been "collected" rather than "generated" in this area;
- Exempts non-ad valorem special assessments for solid waste collection from the distributions;
- Clarifies that payments made for non-county levies that pertain to the South Florida Water Management District or the Florida Inland Navigation District are excluded; and
- Changes distributions to St. Lucie County from within 30 days after the beginning of each calendar year, to June 30.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The 2012 Florida Legislature passed CS/SB 800, which was approved by the Governor on April 6, 2012.[1] Upon its approval by a majority vote of the qualified electors residing in the area affected,[2] this bill revised the boundaries of Martin and St. Lucie counties effective July 1, 2013. The bill also amended s. 7.43, F.S., to expand the boundaries of Martin County and s. 7.59, F.S., to contract the boundaries of St. Lucie County, thus transferring an area known as "Beau Rivage."[3] Additionally, the bill provided that all public roads and associated public rights-of-way within the subject property be transferred from the jurisdiction of St. Lucie County to that of Martin County.

Pursuant to the provisions of ch. 2012-45, L.O.F., the governing bodies of the two counties must enter into an interlocal agreement no later than May 1, 2013, to provide a "financially feasible plan" for transfer of services, personnel, and public infrastructure from St. Lucie County to Martin County. This interlocal agreement also is required to include compensation for the value of infrastructure investments by St. Lucie County in the transferred property minus depreciation, if any.

As of July 1, 2013, the effective date of the bill, the total tax and assessment revenue that would have been generated for FY 2013-14 by all St. Lucie County taxing authorities levying taxes or assessments within the area transferred to Martin County (Beau Rivage) less 10 percent is to be transmitted to St. Lucie County from Martin County for distribution to the county and all other affected taxing authorities.

Thereafter, through FY 2022-23, the tax and assessment revenue amount that would have been generated in Beau Rivage for FY 2013-14 serves as the base amount of tax and assessment revenue for further annual reductions of 10 percent before annual distributions to St. Lucie County. The base amount consequently will be reduced to zero by FY 2022-23, the last year for distributions.

For any fiscal year when the total taxes and assessments collected exceed the base amount by more than three percent, St. Lucie County receives the same percentage distribution from the tax and assessment revenue that exceeds the base amount as it would receive from the base amount. All distributions to St. Lucie County must occur within 30 days after the beginning of each calendar year.

Effect of Proposed Changes

CS/HB 1171 amends ch. 2012-45, L.O.F., revising provisions relating to the temporary distribution from Martin County to St. Lucie County of tax and assessment revenue collected in the Beau Rivage area of St. Lucie County, which will be incorporated into Martin County effective July 1, 2013. The bill clarifies that these calculations will use the total tax and assessment revenue that would have been "collected" rather than "generated" in this area. This provision will prevent Martin County from being liable for taxes and assessments that are in arrears.

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[1] *See*, ch. 2012-45, L.O.F.

[2] The Beau Rivage ballot question was considered on August 14, 2012, and passed by 94.39 percent, with 286 "yes" votes and 17 "no" votes.

[3] The Beau Rivage area consists of 129 acres, which abut the north fork of the St. Lucie River in St. Lucie County. Beau Rivage's 550-plus residents all have Stuart, Florida, addresses, and can only travel into the rest of the St. Lucie County via Martin County roads. Beau Rivage homeowners requested inclusion of their property in Martin County, citing concerns regarding the provision of emergency services.

The bill also exempts non-ad valorem special assessments for solid waste collection from the distributions to St. Lucie County. Beau Rivage currently receives its waste services via a St. Lucie County special assessment through the end of this fiscal year (September 30). At the beginning of the next fiscal year, these services will be provided by a Martin County special assessment. The counties determined that it did not make sense to require a transmittal to St. Lucie County in this instance, when the services at issue were no longer being provided by that entity.

Additionally, the bill clarifies that it does not apply to payments made for non-county levies that pertain to the South Florida Water Management District (SFWMD) or the Florida Inland Navigation District (FIND). These are the only non-county levies that have been identified in St. Lucie County.[4]

Distributions to St. Lucie County are changed in the bill from July 1 of this year, and thereafter within 30 days after the beginning of each calendar year, to June 30. This is to provide for uniformity and because counties generally have not collected taxes by January 1 of each year as these payments do not become delinquent until April 1.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 4 of ch. 2012-45, L.O.F., relating to St. Lucie and Martin counties, revising temporary distributions associated with the transfer of Beau Rivage.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 30, 2013

WHERE? The *St. Lucie News-Tribune*, a daily newspaper of general circulation published in St. Lucie County, and the *Stuart News*, a daily newspaper of general circulation published in Martin County.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

Because this bill impacts both St. Lucie and Martin counties, each of these legislative delegations conducted a public hearing on the subject of the bill, approved the bill, and provided a Local Bill Certification Form.

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

Because this bill impacts both St. Lucie and Martin counties, an Economic Impact Statement was filed by each county.

[4] March 14, 2012, e-mail from Mark Satterlee, Director of St. Lucie County Planning & Development Services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Local & Federal Affairs Committee adopted an amendment, which clarifies that the annual distribution deadline is June 30. This analysis is drafted to the CS.

A bill to be entitled

An act relating to St. Lucie and Martin Counties; amending chapter 2012-45, Laws of Florida; revising provisions for the temporary distribution from Martin County to St. Lucie County of certain tax and assessment revenue collected in a portion of St. Lucie County being incorporated into Martin County; defining the term "tax and assessment revenue"; exempting certain revenue from distribution to St. Lucie County; revising the annual date of such distributions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 4 of chapter 2012-45, Laws of Florida, is amended to read:

Section 4. (1) The governing bodies of St. Lucie County and Martin County shall enter into an interlocal agreement no later than May 1, 2013, which shall provide a financially feasible plan for transfer of services, personnel, and public infrastructure from St. Lucie County to Martin County. The agreement shall include compensation for the value of infrastructure investments by St. Lucie County in the transferred property minus depreciation, if any.

(2)(a) As used in this subsection, the term "tax and assessment revenue" means ~~Upon the effective date of this act,~~ the total tax and assessment revenue that would have been collected ~~generated in fiscal year 2013-2014~~ by all St. Lucie

County taxing authorities levying taxes or assessments within the area transferred to Martin County except for any non-ad valorem special assessments for solid waste collection and any payments to St. Lucie County for noncounty levies that apply only to the South Florida Water Management District or the Florida Inland Navigation District.

(b) The tax and assessment revenue that would have been collected in the transferred area for fiscal year 2013-2014 less 10 percent shall be transmitted to St. Lucie County for distribution to the county and all other affected taxing authorities.

(c) Thereafter, through fiscal year 2022-2023, the tax and assessment revenue ~~amount~~ that would have been collected ~~generated by all St. Lucie County taxing authorities levying taxes or assessments~~ in the transferred area for fiscal year 2013-2014 shall serve as the base amount of tax and assessment revenue for further annual reductions of 10 percent of the base amount before annual distributions to ~~the~~ St. Lucie County through fiscal year 2022-2023.

(d) However, for any fiscal year through fiscal year 2022-2023 when the total taxes and assessments collected within the transferred area exceed the base amount by more than 3 percent, St. Lucie County shall receive the same percentage distribution from the tax and assessment revenue that exceeds the base amount by more than 3 percent as they will receive from the base amount.

(e) All distributions to St. Lucie County shall occur by June 30 ~~within 30 days after the beginning~~ of each calendar

year.

Section 2. This act shall take effect upon becoming a law.

PCS for HB 1381

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1381 Relating to Administrative Review of Property Taxes
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Aldridge	Langston

SUMMARY ANALYSIS

The bill contains several substantial changes to ch. 194, F.S., relating to the value adjustment board review of property tax assessments, exemptions and classifications. Specifically, the bill addresses:

1. The composition of the value adjustment board. The bill changes the composition of value adjustment board membership by replacing one of the two board members from the county governing board with a "professional member" who meets certain requirements.
2. The value adjustment board attorney. Currently, the value adjustment board appoints a private board attorney who has practiced law for over 5 years. The board attorney may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present. The bill substantially expands, in statute, the board attorney's qualifications, responsibilities and duties.
3. Requirements for written decisions by the value adjustment board. Currently, the value adjustment board is required to issue written decisions in certain circumstances. The bill substantially expands the statutory provisions regarding the requirements for written decisions by the value adjustment board, including the required contents of such decisions and providing specific direction regarding the process by which such decisions are arrived at.
4. Special magistrates. Currently, in counties having a population of more than 75,000, the board appoints special magistrates for the purpose of taking testimony and making recommendations to the board. This is optional for counties with a lesser population. The bill would substantially expand upon the special magistrate's qualifications, duties and responsibilities in statute.
5. Consideration of special magistrate's recommended decisions by the value adjustment board. Currently, special magistrates are required to accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The bill substantially expands upon the role of the special magistrate and the process by which the value adjustment board considers special magistrate's recommended decisions.
6. Value adjustment board training and examinations. Currently, the Department of Revenue (Department) is required to develop a policies and procedures manual for value adjustment boards and to provide training for special magistrates. The bill substantially expands upon required training for value adjustment board special magistrates and board attorneys.
7. Reviews of value adjustment board procedures, decisions and records by the Department. The bill authorizes the Department to conduct reviews of the procedures, decisions, and records of value adjustment boards, board attorneys, and special magistrates, and provides for the Department to issue a Notice of Defects under specified circumstances and provides a mechanism for resolving such defects.

The Revenue Estimating Conference reviewed language substantially identical to this bill and determined there would be no local government revenue impacts. The Department estimates that the provisions of the bill will increase the department's operational expenditures by approximately $300,000 annually.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

The Florida Constitution reserves ad valorem taxation (i.e., property taxes) for local governments and it is their largest source of funding.[1] There are several steps to the ad valorem tax process. In the first step, county property appraisers establish each property's just, or market, value as of January 1 of each year and apply any valid exemptions, classifications, or assessment limitations to determine the parcel's taxable value. Local taxing authorities set a millage rate (i.e., tax rate) that is levied on the property's taxable value. Each August, county property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable value of the parcel and the tax that will be due based on the millage rates proposed by local governments.[2] Property owners who disagree with the county property appraiser assessment of their property's market value or who have been denied an exemption or property classification may:

- Request an informal meeting with the property appraiser[3]. Changes made by the property appraiser as a result of such meetings are known as "counter changes";
- Appeal to the county value adjustment board[4]; or
- Challenge the assessment in circuit court[5].

Property taxes are due November 1 or as soon thereafter as the certified tax roll is received by the tax collector.[6] Pending any appeals, unpaid taxes are delinquent after March 31 of the following year.

Composition of the Value Adjustment Board

Section 194.015, F.S., requires that each county have a value adjustment board consisting of five members as follows:

- Two members of the governing body of the county. One will be elected from membership of the governing body and the other will be selected by the chairperson.
- One member of the school board elected by membership of the school board.
- One citizen appointed by the governing body of the county. The citizen must own homestead property within the county.
- One citizen appointed by the school board. This person must own a business occupying commercial space within the school district.

The statute provides that a quorum of three members of the board must include at least:

- One member of the governing body of the county.

[1] Article VII, Sections 1(a) and (9), Florida Constitution
[2] Section 200.069, F.S.
[3] Section 194.011(2), F.S.
[4] Section 194.011(3), F.S.
[5] Section 194.171, F.S.
[6] Section 197.333, F.S.

- One member of the school board.
- One citizen member.

In addition, s. 194.035, F.S., requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings. These special magistrates must be state certified real estate appraisers with at least five years of applicable experience. Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions[7].

Board Attorney

Section 194.015, F.S., provides in part that the board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present.

Written Decisions of the Value Adjustment Board

Section 194.034(2), F.S., provides:

> In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer and the property appraiser of the decision of the board. If requested by the Department of Revenue, the clerk shall provide to the Department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Special Magistrates

Section 194.035(1), F.S., provides in part that:

> In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates.

Special Magistrates Recommended Decisions

Section 194.035(1), F.S., provides in part that:

> The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact,

[7] Section 194.011(5)(a)2., F.S.

conclusions of law, and reasons for upholding or overturning the determination of the property appraiser.

Value Adjustment Board Training

Section 194.011, F.S., provides in part that the Department is required to develop a policies and procedures manual for value adjustment boards, special magistrates, and property owners to use in proceedings before the value adjustment board. In addition, s. 194.035(3), F.S., provides that the Department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the Department's standard measures of value, including the guidelines for real and tangible personal property. A person who has three years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training is open to the public.

Reviews of Value Adjustment Boards by the Department of Revenue

Section 194.036(1)(c), F.S., relating to appeals of decisions of the value adjustment board provides that the property appraiser may appeal a decision to the circuit court if:

> 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 value adjustment board in its decisions. The property appraiser shall notify the department of those portions of the tax roll for which the assertion is made. The department shall thereupon notify the clerk of the board who shall, within 15 days of the notification by the department, send the written decisions of the board to the department. Within 30 days of the receipt of the decisions by the department, the department shall notify the property appraiser of its decision relative to further judicial proceedings. If the department finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it shall so inform the property appraiser, who may thereupon bring suit in circuit court against the value adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial proceeding. However, when a final judicial decision is rendered as a result of an appeal filed pursuant to this paragraph which alters or changes an assessment of a parcel of property of any taxpayer not a party to such procedure, such taxpayer shall have 60 days from the date of the final judicial decision to file an action to contest such altered or changed assessment pursuant to s. 194.171(1), and the provisions of s. 194.171(2) shall not bar such action.

Effect of Proposed Changes

Composition of the Value Adjustment Board

The bill amends s. 194.015, F.S, altering the composition of the value adjustment board to:

- One member of the governing body of the county, elected from membership of the governing body. The bill removes the requirement that the chairperson of the board be a member of the governing body of the county.
- One member of the school board elected by membership of the school board.
- One citizen appointed by the governing body of the county. The citizen must own homestead property within the county.
- One citizen appointed by the school board. This person must own a business occupying commercial space within the school district.

- The bill replaces one member of the governing board of the county with a "professional member" to be appointed by the clerk of the value adjustment board. The bill also provides for the appointment of an "alternate professional member to serve when necessary in place of the professional member." The professional member and the alternate professional member must be a member of the Florida Bar, a Florida certified public accountant or a Florida certified general appraiser.

The bill also amends s. 194.015, F.S., to:

- Provide that the chairperson of the value adjustment board shall be either a citizen member or a professional member.

- Specify that "the board shall have oversight of the board attorney, board clerk, any special magistrates, and a review special magistrate and shall require written legal justification for any advice provided by the board attorney."

- Provide that a quorum of three members of the board must include at least:

    - One member of the governing body of the county or the school board;
    - One citizen member; and
    - One professional member.

Board Attorney

The bill creates s. 194.017, F.S., that substantially expands upon the board attorney's qualifications, responsibilities and duties in statute. Among other things, the new statutory provision:

- Provides that the value adjustment board shall select and appoint a private board attorney, by written contract, who shall be a member of the Florida Bar with no less than 5 years' experience in the area of ad valorem taxation and shall complete the Department's value adjustment board training and pass the corresponding training examination and shall do so annually. The contract must contain the following elements:

    - The contract shall extend for no more than the period of time necessary for the board to complete its duties in reviewing the original assessments of a single tax year;
    - The board attorney shall support and promote the board-related activities necessary for promoting and maintaining a high level of public trust in the value adjustment board process. In all board-related activities, the board attorney will conduct herself or himself in a manner that promotes such high level of public trust. Such public trust requires fairness, consistency, transparency, ethical behavior, competence, and uniform application of the law by the board attorney;
    - The board attorney shall not be an advocate for a taxing authority, but shall be an independent advocate for adherence by the board and special magistrates to the laws of the State of Florida including, but not limited to: the ethics provisions in chapter 112, part III; the rights of property taxpayers as referenced in section 192.0105; the open government provisions in section 286.011; and the provisions of chapter 194, parts I and III;
    - In performing the board attorney's duties, the board attorney's legal advice shall be based solely on the law and shall not be influenced by the amount of property tax involved in any petition or decision;

- As necessary for compliance with law or when requested, the board attorney shall provide timely advice to board members, the board clerk, and to special magistrates, including review special magistrates, to ensure that all board-related activities meet all requirements of law. The board attorney shall advise the board and special magistrates, including review special magistrates, of the prohibition against the board or a special magistrate allowing the amount of property tax involved in any petition or decision to influence the proper outcome under the law; the requirements for training and examinations; statutory criteria that apply to the issue under administrative review; the consideration of evidence; requirements for written decisions; requirements for consideration of recommended decisions; and all other applicable law;
- The board attorney shall ensure the maintenance of complete and accurate records regarding any and all written communication on board-related subjects between the board attorney and the following persons: any other board attorney, any property appraiser or staff, any property owner or representative, any attorney for a party, any special magistrate, including a review special magistrate, a board member, the board clerk, or the Department; and
- All other elements necessary for the orderly and timely performance of board duties with adherence to all requirements of law, which elements must include duties, standards of conduct, and performance standards for the board attorney.

- Provides specific requirements for verbal or written advice from the board attorney regarding any part of the value adjustment board process. These requirements include:
  - When a board member requests verbal or written advice from the board attorney regarding any part of the value adjustment board process, the attorney shall timely provide such legal advice. If a board member believes this legal advice to be in error, the board member shall immediately notify the board, board attorney, board clerk, and the Department in writing and shall include facts and reasons that support this belief.
  - Any verbal or written advice from the board attorney to any board member, directly or indirectly, must be noted on the next meeting agenda with documentation of the advice provided to each board member and made available to the public.
  - When a special magistrate requests verbal or written legal advice from the board attorney regarding the special magistrate's duties, the board attorney shall timely provide such legal advice. If the special magistrate believes this legal advice to be in error, the special magistrate shall immediately notify the board, board attorney, board clerk, and the Department in writing and shall include facts and reasons that support this belief.
  - Any verbal advice from the board attorney to any special magistrate or review special magistrate, must be described in writing by the special magistrate. Any written or verbal advice from the board attorney to any special magistrate or review special magistrate must be documented in every affected recommendation along with the steps taken by the special magistrate or review special magistrate in response to such advice.
  - Any verbal or written advice from the board attorney to the board clerk or staff shall be noted on the next meeting agenda with documentation of the advice provided to each board member along with the steps taken by the board clerk or staff in response to such advice.
- Provides that a review special magistrate, may seek advice from the board attorney and, if so, the board attorney shall timely provide such advice. If a review special magistrate disagrees with the board attorney's advice, whether provided upon request or not, the review special magistrate shall proceed based on his or her own belief of the correct course of action, but shall immediately document in writing the facts, law, and reasons for the disagreement along with the

course of action taken and shall immediately provide this documentation to the board, board attorney, board clerk, and the Department.

- Provides that the board, board attorney, board clerk, and all special magistrates, including review special magistrates, shall ensure the complete and accurate keeping of all records pertaining to the value adjustment board process. Such records must include any and all written communication on subjects related to board activities between the board attorney and the following: any other board attorney, any property appraiser or staff, any property owner or representative, any attorney for a party, any special magistrate, any review special magistrates, a board member, the board clerk, or the Department.
- Provides that the beginning of a petition hearing conducted by the board or a special magistrate, the board attorney shall ensure that each board member or the special magistrate, as the case may be, has a copy of the statutory criteria that apply to the issue under administrative review and shall provide the advice and assistance necessary to ensure that each board member understands the proper use of the statutory criteria in considering the evidence. The board attorney shall clearly, completely, and timely answer any questions regarding the evidence and such criteria.

Written Decisions of the Value Adjustment Board

The bill creates s. 194.020, F.S., that substantially expands the statutory provisions regarding the requirements for written decisions by the value adjustment board. Among other things, the new statutory provision:

- Provides that for each petition, except if the petition is withdrawn by the petitioner or if the petition is acknowledged as correct by the property appraiser, the value adjustment board shall render a written final decision containing specific findings of fact and conclusions of law and must include specific reasons for upholding or overturning the determination of the property appraiser.
- Provides similar requirements for written recommendations for each petition considered by a special magistrate.
- Requires the board attorney's or review special magistrate's advice relating to the facts involved in a petition or to applicable law, if in writing, be included in the record and documented within the findings of fact and conclusions of law in the written decisions of the board and special magistrates. If not in writing, such advice shall be documented within the findings of fact and conclusions of law in the written decision of the board and special magistrates.
- Provides specific requirements for the findings of fact in a final decision, including recitation of each statutory criterion applied by the property appraiser, the reasons why each applied factor was applied, and how each applied factor was applied. The board shall also identify, and report as findings of fact, each statutory criterion not applied by the property appraiser and must determine and report the reasons why each such criterion was not applied by the property appraiser in developing the assessment.
- Provides that the Legislature intends for the value adjustment board to disallow the creation of a special class of property consisting of property that is the subject of a board petition.
- Provides that in administrative reviews involving real property just value assessments, the board and special magistrates shall take administrative or judicial notice, on the board or special magistrate's own motion, of the property appraiser's adjustments to recorded selling prices or fair market value made under s. 193.011(8), if any, and of the forms on which the property appraiser reports these adjustments under s. 192.001(18).
- Requires the Department to make these completed and signed forms available on its website for the benefit of taxpayers, boards, and special magistrates.

- For each petition involving real property just value, the board and special magistrates shall make a finding of fact identifying such appraisal practice applied by the property appraiser to comparable real property within the county.
- Additionally, for each petitioned real property parcel, the board and special magistrates shall make findings of fact on what the property appraiser actually did and did not do under s. 193.011(8) in developing the original assessment. Where necessary for consistency with appraisal practices applied by the property appraiser to comparable real property within the county and to avoid the unauthorized creation of a special class of property, the board and special magistrates shall apply, in administrative reviews involving real property just value assessments, the same type of adjustments applied by the property appraiser under s. 193.011(8) and reported under s. 192.001(18), in an amount that does not result in double-counting the adjustment.
- Provides that the conclusions of law in a final decision must be stated in the terms of the legal criteria that apply to the issue under administrative review and must be logically connected to the findings of fact. The conclusions of law must be made in the statutory order of proof that applies to the issue under administrative review.
- Provides that the value adjustment board's reasons for its decisions must be expressed in findings of fact and conclusions of law and must be sufficiently detailed to enable the parties to understand the evidence, findings of fact, and law on which the decisions are based.

Special Magistrates

The bill amends s. 194.035, F.S., substantially expanding upon the special magistrate's duties and responsibilities. The bill:

- Provides specific requirements for special magistrates to be appointed by written contract and specifying certain duties, standards of conduct and performance standards for the special magistrate.
- Requires special magistrates to annually complete the Department's value adjustment board training and pass the corresponding training examination.
- Provides that an attorney special magistrate shall not be appointed and shall not serve simultaneously as a board attorney or review special magistrate in any county, either during the same calendar period or during administrative reviews for the same tax year
- Provides that in addition to the training noted above for special magistrates, special magistrates appointed to hear issues regarding the valuation of tangible personal property to complete at least 120 hours of professional coursework in tangible personal property valuation of which at least 30 hours was completed within the 5 year period preceding appointment. Alternatively, the special magistrate may be a member of a nationally recognized appraisal organization and have a nationally recognized professional designation in tangible personal property valuation.
- Provides that a value adjustment board is authorized to appoint, by written contract, a qualified review special magistrate for the purpose of assisting the board with reviewing written recommended decisions to determine whether such decisions comply with law.
- Provides that if a board elects not to appoint a review special magistrate, the board attorney shall assist the board with such reviews.
- Provides qualifications for the review special magistrate including certain duties, standards of conduct, and performance standards.

Special Magistrates Recommended Decisions

The bill creates s. 194.021, F.S., that substantially expands upon the role of the special magistrate and the process by which the value adjustment board considers special magistrate's recommended decisions. Among other things, the new statutory provision:

- Provides that a special magistrate shall not submit to the value adjustment board, and the board shall not adopt, any recommended decision that does not comply with ss. 194.020, 194.301, and 194.3015, and with other statutory provisions that apply to the issue under administrative review.
- Provides that any board member is authorized to review any recommended decision before adoption and to question, verbally or in writing the special magistrate, review special magistrate, or board attorney regarding the sufficiency of the recommended decision and provides for timely response in writing to such questions.
- Provides that if the board properly determines that a recommended decision meets the requirements of law, the board shall adopt the recommended decision without further hearing.
- Provides a process if the board determines that a recommended decision does not meet the requirements of law. This process includes:
    - Not adopting such recommended decision and placing in the petition record the reasons for such determination.
    - The board attorney providing advise to the board regarding further action.
    - The board may direct the original or a different special magistrate to produce a recommended decision that complies with law and that is based on, if necessary, a review of the entire record.
    - If necessary, the board may direct the original or a different special magistrate to conduct a new hearing and then produce a written recommended decision that complies with law. The board shall retain any recommended decisions and all other records of actions taken under this section.

Value Adjustment Board Training

The bill creates s. 194.023, F.S., that substantially expands upon required training for value adjustment board special magistrates and board attorneys. Among other things, the new section of law:

- Requires the Department to provide and conduct value adjustment board training for board attorneys and board special magistrates, including review special magistrates, at least once each state fiscal year. The training shall emphasize ethics and public trust, procedures for administrative reviews, consideration of evidence, requirements for written decisions, consideration of recommended decisions, applicable law, and the Department's standard measures of value, including the guidelines for real and tangible personal property. The training shall be open to the public.
- The bill specifies that the Department's training is to inform boards, the board attorney, and special magistrates, including review special magistrates, of the law and other information necessary for conducting board-related activities in accordance with law and public trust. The new section of law provides specific direction regarding the content of the training materials.
- The bill requires the Department to make available a value adjustment board training examination for the board attorney and special magistrates. Both are required to annually complete all portions of such training and must annually take and pass the accompanying training examination. A review special magistrate must complete the portions of the training

and pass the exams that correspond to the type of special magistrate that produced the recommended decisions to be reviewed by the review special magistrate.

- The bill requires board members, board attorneys and special magistrates to "properly consider the department's training materials."
- The bill provides a mechanism for such persons to express disagreement with the Department's training materials and a mechanism for resolving such disagreements.
- The bill provides that ch. 120, F.S., does not apply to the training or its use and does not apply to this new section.

Reviews of Value Adjustment Boards by the Department of Revenue

The bill creates s. 194.025, F.S., authorizing the Department to conduct reviews of the procedures, decisions, and records of value adjustment boards, board attorneys, special magistrates and review special magistrates. The stated purpose of these reviews is to evaluate adherence to law and to promote public trust. This new section of law provides:

- The Department is entitled to receive from the board, upon written request and at no cost to the Department, any records and information pertaining to the value adjustment board process.
- Upon evaluation of any such reviews, the Department must issue a notice of defects to any value adjustment board where the Department has determined that the board, board attorney, a special magistrate, or review special magistrate, has repeatedly failed to properly perform board duties in accordance with law. The Department is to specify in such notice the board duties that have not been properly performed, the type and extent of the defects, and the Department's requirements for the board to obtain the Department's approval of the performance of the board's duties.
- The bill provides a mechanism for the value adjustment board to either notify the Department in writing of the board's intention to comply with the notice of defects or to request an immediate conference between the board chairperson and the Department.
- After the conference, if the Department finds that the differences have not been resolved, it shall issue an administrative order, which incorporates the corrective actions, if any, to be taken by the value adjustment board to ensure that all board duties are properly performed by the board, board attorney, any special magistrates, and any review special magistrate. The Department shall also issue an administrative order in the case where a value adjustment board has stated its intention to comply.
- After receipt of an administrative order issued under this new mechanism, the value adjustment board shall notify the Department of the board's intent to comply with the order or shall notify the Department of the facts, law, and reasons for the board's intended non-compliance. The administrative order shall contain reasonable timeframes for the board's prompt compliance with the order.
- The Department must monitor a board's efforts to comply with an administrative order and shall issue a written determination of whether the board has complied with the Department's order. Upon receipt of a notice of intended non-compliance or upon the Department's determination that a board has failed to properly perform board duties in accordance with an administrative order, the Department shall take such action as it deems necessary pursuant to s. 195.092, F.S.[8]

[8] Section 195.092(1), F.S., provides in pertinent part that "The Department of Revenue shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation, or decision of the Department of Revenue lawfully made under the authority of these tax laws."

- The bill provides that ch. 120, F.S., does not apply to this section.

Effective Date

The bill has an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 194.015, F.S., changing the composition of the value adjustment board.

Section 2: Creates s. 194.017, F.S., requiring the selection and appointment of a board attorney, providing qualifications of the board attorney, specifying the board attorney's duties.

Section 3: Creates s. 194.020, F.S., requiring written decisions by the value adjustment board in certain circumstances, providing requirements for the content of the written decisions.

Section 4: Creates s. 194.021, F.S., providing requirements for the value adjustment board's consideration of recommended decisions provided by special magistrates.

Section 5: Creates s. 194.023, F.S., providing requirements for training by the Department of value adjustment board special magistrates and board attorneys.

Section 6: Creates s. 194.025, F.S., authorizing the Department to conduct reviews of the procedures, decisions, and records of value adjustment boards, board attorneys, special magistrates and review special magistrates; providing for the Department to issue a notification of defects and providing a mechanism for resolution of such defects.

Section 7: Amends s. 194.034(2), F.S., providing conforming changes to value adjustment board hearing procedures and rules.

Section 8: Amends s. 194.035, F.S., specifying that special magistrates shall be appointed by written contract; providing requirements for such contracts; specifying duties of special magistrates, including training requirements.

Section 9: Provides an appropriation.

Section 10: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill contains an appropriation of $208,369 in nonrecurring General Revenue funds to the Department for FY 2012-13 to implement the provisions of the bill. The bill also contains an appropriation of $326,782 in recurring and $18,180 in nonrecurring General Revenue funds for the Department of Revenue to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference reviewed language substantially identical to this bill and determined there would be no local government revenue impacts.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require the expenditures of funds by counties or municipalities or it may reduce the authority that counties or municipalities have to raise revenues in the aggregate; however, an exemption may apply if these possible results have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to value adjustment boards; amending s. 194.015, F.S.; amending the composition of the value adjustment board; providing for a professional member of the value adjustment board; specifying certain duties of the value adjustment board members and board clerk; creating s. 194.017, F.S.; providing conditions for the selection and appointment of a board attorney; providing duties and responsibilities of the board attorney; providing directions for verbal or written advice from the board attorney; creating s. 194.020, F.S.; providing requirements for written decisions of the value adjustment board and special magistrates; creating s. 194.021, F.S.; specifying requirements for consideration of recommended decisions by the value adjustment board; creating s. 194.023, F.S.; requiring the Department of Revenue to provide value adjustment board training for board attorneys and board special magistrates at least once each state fiscal year; providing directions for the content of such training; providing requirements for board attorneys and special magistrates to take the Department of Revenue's value adjustment board training; providing procedures if a board attorney disagrees with a portion of the Department of Revenue's value adjustment board training; creating s. 194.025, F.S.; authorizing the Department of Revenue to conduct reviews of the procedures, decisions, and

records of value adjustment boards, board attorneys and special magistrates; providing for issuance of a notice of defects by the Department of Revenue to the value adjustment board and providing procedures for resolution of such notice of defects; amending s. 194.034, F.S.; amending s. 194.035, F.S.; requiring special magistrates to be appointed by written contract; specifying certain conditions of such written contract; specifying training requirements for special magistrates; authorizing the appointment, by written contract, of review special magistrates, specifying certain conditions of such written contract; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of one member ~~two members~~ of the governing body of the county as elected from the membership of the board of the ~~said~~ governing body, ~~one of whom shall be elected chairperson, and~~ one member of the school board as elected from the membership of the school board, ~~and~~ two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by

the school board and must own a business occupying commercial space located within the school district, and one professional member who shall be a resident of the county. The clerk of the value adjustment board shall appoint the professional member and shall annually notify eligible individuals or their professional associations to make them aware that opportunities to serve as a professional member exist. The professional member or the board clerk shall select and the board clerk shall appoint an alternate professional member to serve when necessary in place of the professional member. The professional member and the alternate professional member shall be a member of the Florida Bar, a Florida certified public accountant under chapter 473, or a Florida certified general appraiser under chapter 475, part II. A professional member or a citizen member shall ~~may~~ not be a member or an employee of any taxing authority, and shall ~~may~~ not be a person who represents a party ~~property owners~~ in any administrative or judicial review of property taxes. Members of the value adjustment board shall elect a chairperson and an alternate chairperson, each of whom shall be either a professional member or a citizen member. The county governing board and school board members of the value adjustment board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. ~~Any t~~Three members shall constitute a quorum of the board, except that each quorum must include at least one member from either the governing board or school board, at least one citizen member, and at least one professional member. ~~of said governing board, at least one member of the school board, and at least one~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

~~citizen member and~~ ~~n~~No meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. To ensure fair and consistent value adjustment board proceedings, the board shall have oversight of the board attorney, board clerk, any special magistrates, and a review special magistrate and shall require written legal justification for any advice provided by the board attorney. ~~The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present.~~ Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

Section 2. Section 194.017, Florida Statutes, is created to read:

194.017 Value Adjustment Board Attorney.—

(1) The value adjustment board shall select and appoint a private board attorney, by written contract, who shall be a member of the Florida Bar with no less than 5 years' experience in the area of ad valorem taxation and shall complete the department's value adjustment board training and pass the corresponding training examination and shall do so annually. The

board attorney shall receive such compensation as may be established by the board. Before appointing a board attorney as its legal counsel, the board shall verify the qualifications of the attorney. The board attorney shall not represent a property appraiser, tax collector, taxing authority, or property taxpayer in any administrative or judicial review of property taxes, in any county, either during the same calendar period or during administrative reviews for the same tax year and shall not have done so in that county in the two year period preceding appointment. The board attorney shall not be appointed and shall not serve simultaneously as a special magistrate or review special magistrate, in any county, either during the same calendar period or during administrative reviews for the same tax year. The board attorney may serve in multiple counties. No meeting of the board may take place unless the board attorney is present.

(2)(a) The board attorney's duty shall be to support the laws of the State of Florida and to support the board-related activities necessary for promoting and maintaining a high level of public trust in the value adjustment board process. Such public trust requires ethical behavior, fairness, consistency, competence, transparency, and uniform application of the law by the board, special magistrates, review special magistrates, board clerk, and board attorney. The board attorney shall adhere to the ethics provisions in chapter 112, part III, the open government provisions in section 286.011, the provisions on taxpayer rights as referenced in section 192.0105, the provisions of chapter 194, parts I and III and all other

applicable law.

(b) The board attorney shall not act as an advocate for a taxing authority and shall avoid any appearance of such advocacy. The board attorney's legal advice shall be based solely on the law and shall not be influenced by the amount of property tax involved in any petition or decision.

(3)(a) The board attorney shall advise and assist the board, board clerk, and special magistrates, including review special magistrates on all aspects of the value adjustment board process so that all board-related activities comply with law and promote a high level of public trust. If a board member, board clerk, or special magistrate does not timely follow the advice of the board attorney, the board attorney shall timely notify the department in writing and include the facts and law involved.

(b) The board attorney shall advise the board, board clerk, and special magistrates, including review special magistrates, on the existence and use of the department's uniform policies and procedures manual and accompanying documents, as well as the department's training materials. The board attorney shall advise the board on: public trust; the ethics provisions in chapter 112, part III; the rights of taxpayers as referenced in section 192.0105; the open government provisions in section 286.011; the provisions of chapter 194, parts I and III; the requirements for training and examinations; statutory criteria that apply to the issue under administrative review; the consideration of evidence; requirements for written decisions; requirements for consideration and adoption of recommended decisions; the

prohibition against the board or a special magistrate allowing the amount of property tax involved in any petition or decision to influence the proper outcome under the law; and all other applicable law.

(4) Verbal or written advice from the board attorney regarding any part of the value adjustment board process shall be transparent and be part of the public record.

(a)1. When a board member requests verbal or written advice from the board attorney regarding any part of the value adjustment board process, the attorney shall timely provide such legal advice. If a board member believes this legal advice to be in error, the board member shall immediately notify the board, board attorney, board clerk, and the department in writing and shall include facts and reasons that support this belief.

2. Any verbal or written advice from the board attorney to any board member, directly or indirectly, shall be noted on the next meeting agenda with documentation of the advice provided to each board member and made available to the public.

(b)1. When a special magistrate requests verbal or written legal advice from the board attorney regarding the special magistrate's duties, the board attorney shall timely provide such legal advice. If the special magistrate believes this legal advice to be in error, the special magistrate shall immediately notify the board, board attorney, board clerk, and the department in writing and shall include facts and reasons that support this belief.

2. Any verbal advice from the board attorney to any special magistrate or review special magistrate, must be described in

writing by the special magistrate. Any written or verbal advice from the board attorney to any special magistrate or review special magistrate must be documented in every affected recommendation along with the steps taken by the special magistrate or review special magistrate in response to such advice.

(c) Any verbal or written advice from the board attorney to the board clerk or staff shall be noted on the next meeting agenda with documentation of the advice provided to each board member along with the steps taken by the board clerk or staff in response to such advice.

(5) A review special magistrate, as described in section 194.035(2), may seek advice from the board attorney and, if so, the board attorney shall timely provide such advice. If a review special magistrate disagrees with the board attorney's advice, whether provided upon request or not, the review special magistrate shall proceed based on his or her own belief of the correct course of action, but shall immediately document in writing the facts, law, and reasons for the disagreement along with the course of action taken and shall immediately provide this documentation to the board, board attorney, board clerk, and the department.

(6) The board, board attorney, board clerk, and all special magistrates, including review special magistrates, shall ensure the complete and accurate keeping of all records pertaining to the value adjustment board process. Such records must include any and all written communication on subjects related to board activities between the board attorney and the following: any

other board attorney, any property appraiser or staff, any property owner or representative, any attorney for a party, any special magistrate, any review special magistrates, a board member, the board clerk, or the department.

(7)(a) At the beginning of a petition hearing conducted by the board, the board attorney shall ensure that each board member has a copy of the statutory criteria that apply to the issue under administrative review and shall provide the advice and assistance necessary to ensure that each board member understands the proper use of the statutory criteria in considering the evidence. The board attorney shall clearly, completely, and timely answer any questions a board member may have regarding the evidence and such criteria.

(b) Before the beginning of a petition hearing conducted by a special magistrate, the board attorney shall ensure that the special magistrate has a copy of the statutory criteria that apply to the issue under administrative review and shall provide the advice and assistance necessary to ensure that the special magistrate understands the proper use of the statutory criteria in considering the evidence. The board attorney shall clearly, completely, and timely answer any questions a special magistrate may have regarding the evidence and such criteria.

(8)(a) The executed written contract between the value adjustment board and the board attorney shall extend for no more than the period of time necessary for the board to complete its duties in reviewing the original assessments of a single tax year.

(b) A value adjustment board may not use any contract to

appoint its board attorney unless such contract is in writing and specifies agreement between the board and the board attorney regarding the following elements:

1. The board attorney shall support and promote the board-related activities necessary for promoting and maintaining a high level of public trust in the value adjustment board process. In all board-related activities, the board attorney will conduct herself or himself in a manner that promotes such high level of public trust. Such public trust requires fairness, consistency, transparency, ethical behavior, competence, and uniform application of the law by the board attorney;

2. The board attorney shall not be an advocate for a taxing authority, but shall be an independent advocate for adherence by the board and special magistrates to the laws of the State of Florida including, but not limited to: the ethics provisions in chapter 112, part III; the rights of property taxpayers as referenced in section 192.0105; the open government provisions in section 286.011; and the provisions of chapter 194, parts I and III.

3. In all board-related activities, the board attorney shall adhere to the laws of the State of Florida including, but not limited to: the ethics provisions in chapter 112, part III; the rights of taxpayers as referenced in section 192.0105; the open government provisions in section 286.011; and the provisions of chapter 194, parts I and III. In performing the board attorney's duties, the board attorney's legal advice shall be based solely on the law and shall not be influenced by the amount of property tax involved in any petition or decision;

4. As necessary for compliance with law or when requested, the board attorney shall provide timely advice to board members, the board clerk, and to special magistrates, including review special magistrates, to ensure that all board-related activities meet all requirements of law. The board attorney shall advise the board and special magistrates, including review special magistrates, of the prohibition against the board or a special magistrate allowing the amount of property tax involved in any petition or decision to influence the proper outcome under the law;

5. The board attorney shall advise the board and special magistrates, including review special magistrates, on: public trust; the ethics provisions in chapter 112, part III; the rights of taxpayers as referenced in section 192.0105; the open government provisions in section 286.011; the provisions of chapter 194, parts I and III; the requirements for training and examinations; statutory criteria that apply to the issue under administrative review; the consideration of evidence; requirements for written decisions; requirements for consideration of recommended decisions; and all other applicable law;

6. The board attorney shall ensure the maintenance of complete and accurate records regarding any and all written communication on board-related subjects between the board attorney and the following persons: any other board attorney, any property appraiser or staff, any property owner or representative, any attorney for a party, any special magistrate, including a review special magistrate, a board

member, the board clerk, or the department; and

7. All other elements necessary for the orderly and timely performance of board duties with adherence to all requirements of law, which elements must include duties, standards of conduct, and performance standards for the board attorney.

(9) Any information received by the department under this section must be considered by the department in its oversight and training role.

Section 3. Section 194.020, Florida Statutes, is created to read:

194.020 Requirements for Written Decisions.—

(1) To promote public trust in the value adjustment board process, the Legislature intends for the requirements of this section to facilitate the development of fair, lawful, and consistent written decisions by boards and special magistrates. There must be no substantial errors in the development of any written decision by a board or special magistrate.

(2)(a) For each petition, except if the petition is withdrawn by the petitioner or if the petition is acknowledged as correct by the property appraiser, the value adjustment board shall render a written final decision. If a special magistrate has been appointed, the board shall consider the written recommended decisions produced by the special magistrate. Each written final decision of the board must contain specific findings of fact and conclusions of law and must include specific reasons for upholding or overturning the determination of the property appraiser. All recommended and final decisions must meet the requirements of this section, ss. 194.021,

194.301, and 194.3015, and other statutory criteria that apply to the issue under administrative review. Any substantial errors of fact or law in the development of a written recommended decision must be corrected before the board can adopt the recommended decision as final.

(b) For each petition considered by a special magistrate, except if the petition is withdrawn by the petitioner or if the petition is acknowledged as correct by the property appraiser, the special magistrate shall produce a written recommended decision for consideration by the board. Each written recommended decision must contain specific findings of fact and conclusions of law and must include specific reasons for upholding or overturning the determination of the property appraiser. Each written recommended decision must meet the same requirements provided in this section for the board's final decisions.

(3) The board attorney's or review special magistrate's advice relating to the facts involved in a petition or to applicable law, if in writing, shall be included in the record and documented within the findings of fact and conclusions of law in the written decisions of the board and special magistrates. If not in writing, such advice shall be documented within the findings of fact and conclusions of law in the written decision of the board and special magistrates.

(4)(a)1. The findings of fact in a final decision must be based on the relevance and credibility of the evidence and must specifically identify the record evidence, or lack thereof, that relates to each of the statutory criteria that apply to the

issue under administrative review. The findings of fact must include logical reasoning that connects the record evidence with the findings and must support the conclusions of law.

2. Based on the evidence, the value adjustment board shall determine, and report as findings of fact in a written final decision, the following: each statutory criterion applied by the property appraiser, the reasons why each applied factor was applied, and how each applied factor was applied. The board shall also identify, and report as findings of fact, each statutory criterion not applied by the property appraiser and must determine and report the reasons why each such criterion was not applied by the property appraiser in developing the assessment.

3. The Legislature intends for the value adjustment board to disallow the creation of a special class of property consisting of property that is the subject of a board petition. Accordingly, in administrative reviews involving real property just value assessments, the board and special magistrates shall take administrative or judicial notice, on the board or special magistrate's own motion, of the property appraiser's adjustments to recorded selling prices or fair market value made under s. 193.011(8), if any, and of the forms on which the property appraiser reports these adjustments under s. 192.001(18). The department shall make these completed and signed forms available on its website for the benefit of taxpayers, boards, and special magistrates. By these requirements, the Legislature intends for such form to be part of the record evidence in each board petition involving real property just value, regardless of

whether the parties presented such form as evidence. The board and special magistrates shall deem any adjustment reported on such form, for the property group of which the petitioned property is part, as sufficient evidence to show an appraisal practice applied by the property appraiser to comparable real property within the same county as provided in subparagraph 194.301(2)(a)3. For each petition involving real property just value, the board and special magistrates shall make a finding of fact identifying such appraisal practice applied by the property appraiser to comparable real property within the county. Additionally, for each petitioned real property parcel, the board and special magistrates shall make findings of fact on what the property appraiser actually did and did not do under s. 193.011(8) in developing the original assessment. Where necessary for consistency with appraisal practices applied by the property appraiser to comparable real property within the county and to avoid the unauthorized creation of a special class of property, the board and special magistrates shall apply, in administrative reviews involving real property just value assessments, the same type of adjustments applied by the property appraiser under s. 193.011(8) and reported under s. 192.001(18), in an amount that does not result in double-counting the adjustment. The department shall address this requirement in its value adjustment board training.

(b) The conclusions of law in a final decision must be stated in the terms of the legal criteria that apply to the issue under administrative review and must be logically connected to the findings of fact. The conclusions of law must

be made in the statutory order of proof that applies to the issue under administrative review.

(c) The value adjustment board's reasons for its decisions must be expressed in findings of fact and conclusions of law and must be sufficiently detailed to enable the parties to understand the evidence, findings of fact, and law on which the decisions are based.

Section 4. Section 194.021, Florida Statutes, is created to read:

194.021 Consideration of Recommended Decisions.—

(1) A special magistrate shall not submit to the value adjustment board, and the board shall not adopt, any recommended decision that does not comply with ss. 194.020, 194.301, and 194.3015, and with other statutory provisions that apply to the issue under administrative review.

(2)(a) In considering written recommended decisions before adoption, the board shall first determine whether each recommended decision meets the requirements of law. A review of the entire record is not required for this determination unless warranted under the circumstances. The board attorney or a review special magistrate shall assist the board in making such determination. Any issues brought to the board's attention shall be appropriately addressed before the board adopts any recommended decision.

(b) Any board member is authorized to review any recommended decision before adoption and to question, verbally or in writing the special magistrate, review special magistrate, or board attorney regarding the sufficiency of the recommended

decision. The special magistrate, review special magistrate, or board attorney shall timely respond in writing to a board member's questions and concerns regarding a recommended decision. Any substantial errors of fact or law in the development of a written recommended decision must be corrected before the board can adopt the recommended decision as final.

(3) If the board properly determines that a recommended decision meets the requirements of law, the board shall adopt the recommended decision without further hearing.

(4) If the board determines that a recommended decision does not meet the requirements of law, the board shall not adopt such recommended decision and shall place in the petition record the reasons for such determination. The board attorney shall advise the board regarding further action and shall provide legal justification for the advice. The board shall take the steps necessary for producing a final decision that complies with law. The board may direct the original or a different special magistrate to produce a recommended decision that complies with law and that is based on, if necessary, a review of the entire record. If necessary, the board may direct the original or a different special magistrate to conduct a new hearing and then produce a written recommended decision that complies with law. The board shall retain any recommended decisions and all other records of actions taken under this section.

Section 5. Section 194.023, Florida Statutes, is created to read:

194.023 Value Adjustment Board Training; Examinations.—

(1) The Department of Revenue shall annually develop and provide to the clerk of the value adjustment board a list of members of the Florida Bar who have completed the department's training for board attorneys and have passed the accompanying examination.

(2)(a) The department shall provide and conduct value adjustment board training for board attorneys and board special magistrates, including review special magistrates, at least once each state fiscal year. Such training shall emphasize ethics and public trust, procedures for administrative reviews, consideration of evidence, requirements for written decisions, consideration of recommended decisions, applicable law, and the department's standard measures of value, including the guidelines for real and tangible personal property. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).

(b) The legislative intent is for the department's training to inform boards, the board attorney, and special magistrates, including review special magistrates, of the law and other information necessary for conducting board-related activities in accordance with law and public trust. The training materials will consist of any content designated by the department from time to time as being part of the training, including, but not limited to, any training update bulletins or other advisory

communication. The training materials shall include the department's observations, explanations, examples, and recommendations for the purpose of assisting boards, board attorneys, and special magistrates in performing their duties in accordance with law. The department's explanations and recommendations may include legal opinions. Boards, board attorneys, and special magistrates shall comply with law and the department's training must inform boards, board attorneys, and special magistrates, including review special magistrates, of the actions the department believes must be taken or avoided for compliance with law. The department's training materials must include a checklist or worksheet of requirements necessary for fair, lawful, and consistent written decisions.

(3)(a) Each fiscal year, the department shall make available a value adjustment board training examination for the board attorney. The board attorney shall annually complete all portions of the department's value adjustment board training and shall annually take and pass the accompanying training examination.

(b)1. Each fiscal year, the department shall make available a value adjustment board training examination for each of the three types of special magistrates specified in s. 194.035(1). Each special magistrate shall annually complete the applicable portions of the department's value adjustment board training and shall annually take and pass the accompanying training examination.

2. Each review special magistrate shall annually complete the appropriate portions of the value adjustment board training

and annually take and pass the corresponding examinations. A review special magistrate must complete the portions of the training and pass the exams that correspond to the type of special magistrate that produced the recommended decisions to be reviewed by the review special magistrate. If a review special magistrate is appointed to review recommended decisions pertaining to all assessment types, then he or she shall annually take all portions of the department's training and shall take and pass the examinations for each of the three types of special magistrates.

(4)(a) A board member, board attorney, special magistrate, or review special magistrate cannot disregard and must properly consider the department's training materials. If a board special magistrate, or review special magistrate, believes that a portion of the training materials is contrary to law and should not be followed, the board special magistrate, or review special magistrate shall immediately request a legal opinion from the board attorney. In response to this request, the board attorney shall timely provide a written legal opinion that specifically: identifies the portion of the training materials at issue; describes the facts involved; cites and describes applicable law; states whether the board attorney agrees or disagrees with the training materials and provides reasons why; and provides specific conclusions for resolving the matter. The board attorney shall timely send a copy of this opinion to the department.

(b) If the board attorney concludes in his or her opinion that a portion of the training materials is incorrect, the board

attorney shall produce written recommended revisions that the board attorney believes would correct that portion of the training materials and timely send these revisions to the department. The department shall consider the board attorney's legal opinion and recommended revisions and evaluate whether a significant difference still exists between the department's training materials and the board attorney's legal opinion. The department shall notify the board in writing regarding the results of its evaluation and shall include appropriate recommendations which the board must properly consider.

(5) Any information received by the department under this section must be considered by the department in its oversight and training role.

(6) Chapter 120 does not apply to the training or its use and does not apply to this section.

Section 6. Section 194.025, Florida Statutes, is created to read:

194.025 Reviews: Notification of Defects.—

(1) The department is authorized to conduct reviews of the procedures, decisions, and records of value adjustment boards, board attorneys, special magistrates and review special magistrates. The purpose of these reviews is to evaluate adherence to law and to promote public trust, and the board, board attorney, board clerk, special magistrates, and review special magistrates shall cooperate with the department in these reviews. The department is entitled to receive from the board, upon written request and at no cost to the department, any records and information pertaining to the value adjustment board

process.

(2)(a) Upon evaluation of any reviews of the Department of Revenue under subsection (1), the executive director of the department, or his or her designee, shall issue a notice of defects to any value adjustment board where the executive director, or his or her designee, has determined that the board, board attorney, a special magistrate, or review special magistrate, has repeatedly failed to properly perform board duties in accordance with law. The executive director, or his or her designee, shall specify in his or her notice, the board duties that have not been properly performed, the type and extent of the defects, and the department's requirements for the board to obtain the department's approval of the performance of the board's duties.

(b) Not later than 20 days after receipt of a notice of defects, the value adjustment board shall either notify the executive director, or his or her designee, in writing of the board's intention to comply or request an immediate conference between the board chairperson, or his or her designee, and the executive director, or his or her designee, for the purpose of attempting to resolve differences between the value adjustment board and the executive director, or his or her designee. Such conference shall be held not later than 20 days after the department's receipt of the board's notification. Not later than 15 days after the conclusion of the conference, and if the executive director, or his or her designee, finds that the differences have not been resolved, the executive director, or his or her designee, shall issue an administrative order, which

order shall incorporate the corrective actions, if any, to be taken by the value adjustment board to ensure that all board duties are properly performed by the board, board attorney, any special magistrates, and any review special magistrate. The executive director, or his or her designee, shall also issue an administrative order in the case where a value adjustment board has stated its intention to comply.

(c) Not later than 20 days after receipt of an administrative order issued under this subsection, the value adjustment board shall notify the department of the board's intent to comply with the order or shall notify the department of the facts, law, and reasons for the board's intended non-compliance. The administrative order shall contain reasonable timeframes for the board's prompt compliance with the order. The department shall monitor a board's efforts to comply with an administrative order and shall issue a written determination of whether the board has complied with the department's order. Upon receipt of a notice of intended non-compliance or upon the department's determination that a board has failed to properly perform board duties in accordance with an administrative order, the department shall take such action as it deems necessary pursuant to s. 195.092.

(3) Chapter 120 does not apply to this section.

Section 7. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) ~~In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by~~

~~the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued~~ The value adjustment board shall issue all of its written final decisions within 20 calendar days after the last day the board is in session under s. 194.032. ~~The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board.~~ The clerk, upon issuance of a final decision, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer and the property appraiser of the decision of the board. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

Section 8. Section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1)(a) In counties having a population of more than 75,000, the board shall appoint special magistrates, by individual written contract, for the purpose of taking testimony and making recommendations to the board.~~, which recommendations the board may act upon without further hearing.~~ Each contract between the board and a special magistrate must specify duties, standards of conduct, and performance standards for the special magistrate. A special magistrate shall not advocate for ~~the~~

~~board or~~ a taxing authority, but rather the special magistrate's duty shall be to support the laws of the State of Florida and to support the board-related activities necessary for promoting and maintaining a high level of public trust in the value adjustment board process. Such public trust requires ethical behavior, fairness, consistency, competence, transparency, and uniform application of the law. Each special magistrate shall adhere to the ethics provisions in chapter 112, part III, the open government provisions in section 286.011, the provisions on taxpayer rights as referenced in section 192.0105, the provisions of chapter 194, parts I and III, and to all other applicable law. A special magistrate shall not allow the amount of property tax involved in any petition or decision to influence the proper outcome under the law. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment

board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. ~~If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3).~~

(b)1. A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation and shall have annually completed the department's value adjustment board training and passed the corresponding training examination. An attorney special magistrate shall not be appointed and shall not serve simultaneously as board legal counsel or review special magistrate in any county, either during the same calendar period or during administrative reviews for the same tax year.

2. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real

property valuation and shall have annually completed the department's value adjustment board training and passed the department's corresponding training examination.

3. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation and shall have annually completed the department's value adjustment board training and passed the department's corresponding training examination and shall have provided to the board clerk sufficient evidence of having completed at least 120 hours of professional coursework in tangible personal property valuation of which at least 30 hours was completed within the 5 year period preceding appointment. Alternatively, a tangible personal property special magistrate shall be a member of a nationally recognized appraisal organization and have a nationally recognized professional designation in tangible personal property valuation and shall have annually completed the department's value adjustment board training and passed the department's corresponding training examination.

(c) A special magistrate need not be a resident of the county in which he or she serves. A special magistrate shall ~~may~~ not represent any property appraiser, tax collector, taxing authority, or property taxpayer in any administrative or judicial review of property taxes ~~a person before the board~~ in any tax year during which he or she has served ~~that board~~ as a special magistrate. Before appointing a special magistrate, a

value adjustment board shall verify the special magistrate's qualifications. In the appointment of special magistrates and in the scheduling of special magistrates for hearings, the board, board attorney, and board clerk shall ensure that no consideration whatsoever is given to the dollar amount or percentage amount of any assessment reductions recommended by any special magistrate either in the current year or in any prior year. The value adjustment board shall ensure that the ~~selection~~ appointment of special magistrates and the scheduling of special magistrates for hearings is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve the petition record including all testimony and documents ~~all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser~~.

(d) The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.

(2)(a) A value adjustment board is authorized to appoint, by written contract, a qualified review special magistrate for the purpose of assisting the board with reviewing written recommended decisions to determine whether such decisions comply with law. A contract between the board and a review special magistrate must specify duties, standards of conduct, and

performance standards for the review special magistrate. If a board elects not to appoint a review special magistrate, the board attorney shall assist the board with such reviews. A review special magistrate shall be a member of The Florida Bar with no less than 5 years experience in the area of ad valorem taxation and shall have completed the department's training and passed the training examination for the type of special magistrate that produced the recommended decisions to be reviewed by the review special magistrate. A review special magistrate shall not be appointed and shall not serve simultaneously as the board attorney or attorney special magistrate, in any county, either during the same calendar period or during administrative reviews for the same tax year. A review special magistrate shall not represent any property appraiser, tax collector, taxing authority, or property taxpayer in any administrative or judicial review of property taxes and shall not have done so in the two year period preceding appointment.

(b) A review special magistrate shall not advocate for the board or a taxing authority, but rather the review special magistrate's duty shall be to support the laws of the State of Florida and to support the board-related activities necessary for promoting and maintaining a high level of public trust in the value adjustment board process. Such public trust requires ethical behavior, fairness, consistency, competence, transparency, and uniform application of the law. Each review special magistrate shall adhere to the ethics provisions in chapter 112, part III, the open government provisions in section

286.011, the provisions on taxpayer rights as referenced in section 192.0105, the provisions of chapters 194, parts I and III and to all other applicable law. A review special magistrate shall not allow the amount of property tax involved in any petition or decision to influence the proper outcome under the law.

(~~2~~3) The value adjustment board of each county may employ qualified property appraisers or evaluators to appear before the value adjustment board at that meeting of the board which is held for the purpose of hearing complaints. Such property appraisers or evaluators shall present testimony as to the just value of any property the value of which is contested before the board and shall submit to examination by the board, the taxpayer, and the property appraiser.

~~(3) The department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property. Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).~~

Section 9. (1) The sum of $208,369 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Revenue for the 2012-2013 fiscal year to implement the provisions of this act.

(2) The sum of $326,782 in recurring funds and $18,810 in nonrecurring funds from the General Revenue Fund and five full-time equivalent positions and associated salary rate of $225,038 are appropriated to the Department of Revenue for the 2013-2014 fiscal year to implement the provisions of this act.

Section 10. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-08 Relating to Property Tax
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Aldridge	Langston

SUMMARY ANALYSIS

The bill contains several changes to statutes related to ad valorem taxation. The bill:

- Clarifies that a commercial mail delivery service postmark qualifies for the filing of certain applications and returns by taxpayers,
- Authorizes the use of electronic mail by property appraisers and value adjustment boards for certain documents with taxpayer consent,
- Requires notices related to tax roll certification to be provided on property appraiser websites,
- Provides long-term lessees the ability to retain their homestead exemption and related assessment limitations and exemptions in certain instances,
- Allows for an automatic renewal for assessment reductions related to certain additions to homestead properties if used as living quarters for a parent or grandparent, and aligns related appeal and penalty provisions to those for homestead exemptions,
- Deletes a statutory requirement that the owner of a property must reside upon the property to qualify for a homestead exemption (This requirement has been ruled unconstitutional by the Florida Supreme Court),
- Clarifies the ability of local governments to provide property tax exemptions for persons 65 and older,
- Removes a residency requirement that a senior disabled veteran must have been a Florida resident at the time they entered the service to qualify for certain property tax exemptions, consistent with a constitutional amendment to remove this residency requirement approved in November 2012,
- Repeals the ability for certain limited liability partnerships to qualify for the affordable housing property tax exemption,
- Exempts property used exclusively for educational purposes when the entities that own the property and the educational facility are owned by the same natural persons.

The Revenue Estimating Conference (REC) has estimated impacts of the three provisions in the bill expected to have a revenue impact on local government. The provision related to property used for educational purposes would have a recurring negative impact of -$0.1 million beginning in FY 2014-15. The provision related to affordable housing would have a positive impact in FY 2013-14 of $23.4 million ($117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

Except as otherwise expressly provided in the bill and except for the effective date section, which shall take effect upon the bill becoming a law, the bill shall take effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill contains several changes to statutes related to ad valorem taxation.

Filing Dates for Returns and Applications

Current Situation

Section 192.047, F.S., instructs property tax administrators to determine the date a person filed a property tax return or an application for exemption or special classification by using the United States Postal Service postmark date. Taxpayers that use commercial mail delivery service do not receive a United States Postal Service postmark date, and thus, may not receive the same amount of time to file returns and applications.

Proposed Change

The bill amends the date of filing provisions to allow a postmark from the United State Postal Service or a commercial mail delivery service to be considered the date of filing for returns and applications.

Electronic Notices Related to Property Taxes

Current Situation

Property appraisers must periodically mail notices of proposed property taxes, renewal applications for exemptions, and notices of intent to deny certain exemptions to taxpayers. Value adjustment boards are required to mail board decisions to property appraisers and petitioners.

Proposed Change

The bill creates s. 192.130, F.S., authorizing property appraisers to obtain permission from taxpayers to provide notices of proposed property taxes, renewal applications for certain exemptions and notices of intent to deny exemptions by electronic mail (email), rather than by mail. The bill authorizes value adjustment boards to obtain permission to provide board decisions by email, rather than by mail.

In order to provide these items by email, property appraisers and value adjustment boards are required to obtain consent from the recipient in writing and verify the email address of the recipient. The form used to obtain the recipient's consent must contain a disclaimer that informs the taxpayer that e-mail addresses are public records, and as such, subject to disclosure pursuant to a public records request. If a document is sent by email and the email is returned undeliverable, the property appraiser and value adjustment board must send the item by mail. Documents sent by email must comply with statutory requirements as to notice and form. The sender must renew the consent and verification requirements every 5 years.

Publication of Notice Concerning Certified Assessment Rolls

Current Situation

After property appraisers certify their property assessment rolls, they are required to publish a notice of the date of certification in a local periodical meeting certain statutory requirements as to publication frequency, etc.[1]

[1] Section 193.122(2), F.S.

Proposed Change

The bill requires property appraisers to publish the notices of the date of certification on their websites in addition to the notices published in a local periodical.

Ad Valorem Tax – Homestead Exemption and Assessment Limitations

Current Situation

Florida provides ad valorem tax exemptions and assessment limitations for homestead property.[2] Both property owners and long-term lessees[3] are entitled to homestead exemptions and assessment limitations if they use their property as a homestead.

Property generally is assessed at just value on January 1 of the year following a "change in ownership." A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title.[4] However, certain title transfers—a transfer of title to correct an error, a transfer between legal and equitable title, and a transfer when the owner is listed as both a grantor and grantee—do not constitute a change of ownership when the person entitled to the homestead does not change after the transfer of title.

Proposed Change

For long-term lessees that qualify for homestead tax exemptions and limitations, the bill adds to the list of transfers that do not constitute a change of ownership a transfer of title that occurs when the person who is entitled to the homestead tax treatment is a long-term lessee entitled to homestead pursuant to s. 196.041(1), F.S., and that lessee continues to be entitled to homestead treatment after the transfer of title. This makes explicit in statute current practice by property tax administrators.

Current Situation

When a homestead owner sells homestead property and purchases a new homestead, he or she is entitled to transfer a portion of the assessment limitation accrued on the prior homestead to his or her new homestead.[5] Property appraisers determine the amount of assessment limitation that can be transferred and, if the property owner disagrees, the property owner can appeal to the value adjustment board.[6] Property owners can appeal the value adjustment board decision to circuit court, but must do so within 15 days following the value adjustment board decision.[7]

Proposed Change

The bill extends the time for property owners to appeal value adjustment board decisions on transfers of assessment limitations from 15 to 60 days, which will align this court filing time frame with the general court filing time frame provided for challenges to tax assessments.[8]

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[2] See generally Fla. Const. Art. VII, ss. 4 and 6

[3] Lessees are entitled to homestead exemptions and assessment limitations if they use the property as a homestead and have a lease of at least 98 years (50 years if executed prior to June 19, 1973). See s. 196.041(1), F.S.

[4] Section 193.155(3)(a), F.S.

[5] See Fla. Const. Art. VII, s. 4(d)(8)

[6] Section 193.155(8)(l), F.S.

[7] *Id.*

[8] See s. 194.171(2), F.S.

Homestead Exemption; Living Quarters for Parents and Grandparents; Application

Current Situation

Counties may provide a reduction in assessed value for living quarters constructed on homestead property for the purpose of providing living quarters for parents or grandparents (granny flats).[9] The authority for the granny flats reduction is in ch. 193, F.S., and thus, counties cannot use their current authority to waive the annual application requirement; the property owner must apply for the assessment reduction every year.

If a property owner claiming the granny flats reduction willfully makes a false statement when applying for the reduction, a civil penalty of not more than $1,000 applies, and the property does not qualify for the reduction for 5 years.

Proposed Change

The bill amends the granny flats reduction to allow counties to waive the annual application requirement. Additionally, the proposed bill requires property owners to notify the property appraiser when the property owner no longer qualifies for the reduction. The proposed bill removes the civil penalty and 5 year disqualification provisions from the granny flats reduction, and inserts authorization to assess for any reductions improperly claimed for the prior 10 years, a penalty equal to 50 percent, and 15 percent interest per year. These penalties are the same as those for improperly claimed homestead exemptions. The property appraiser would be required to give the property owner 30 days to pay the assessment; after 30 days, the property appraiser must file a lien against all property of the property owner in the county. If a taxpayer improperly receives the reduction due to a clerical mistake or omission of the property appraiser, the property appraiser may not impose penalty or interest.

Change in Statute to Conform to Amendment 2 Approved by the Voters in November 2012.

Current Situation

In November of 2012, the voters approved a constitutional amendment regarding a property tax exemption for certain disabled veterans. Prior to the amendment, Florida provided a property tax exemption for disabled veterans' homestead property if the veteran was 65 or older, permanently disabled with a combat related disability, and was a resident of Florida at the time of entering military service of the United States.

The amendment removed the requirement that the veteran be a resident of Florida at the time of entering military service.

Proposed Change

The bill amends ss. 196.082(1) and (3) to conform to the amendment approved by the voters.

Homestead Exemption; Dependents Residing on the Property

Current Situation

Garcia v. Andonie, 101 So.3d 339 (Fla. 2012), is a property tax case involving the right to a homestead exemption when the owner of the property does not reside on the property, but the owner's dependent

[9] See s. 193.703, F.S.

maintained permanent residence upon the property. Section 196.031(1)(a), F.S., provides in pertinent part that:

> Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption ... as defined in s. 6, Art. VII of the State Constitution [homestead exemption].

However, Article VII, s. 6(a) of the Florida Constitution does not include the language requiring the owner to reside upon the property to qualify for the homestead exemption. Note that the pre-1968 version of the Florida Constitution did contain the residency requirement.

In *Andonie,* the Florida Supreme Court found the residency requirement in s. 196.031(1)(a), F.S., to be unconstitutional.

Proposed Change

The bill strikes the residency language from s. 196.031(1)(a), F.S.

Additional Homestead Exemption – Person Age 65 or Older – Amendment 11 Approved by the Voters in November 2012 – Implementing Bill Glitch

Current Situation

Since 1999, cities and counties have been authorized to offer an additional homestead exemption of up to $50,000 to certain low income seniors.[10]

In November of 2012, the voters approved a constitutional amendment that authorized the Legislature to allow cities and counties to grant an additional homestead exemption for persons 65 or older.[11] The proposal would allow an exemption equal to the assessed value of homestead property when the just value is less than $250,000. The owner would still be required to be aged 65 years or older and maintain his or her permanent residence on the property; however, the owner must have maintained his or her permanent residence thereon for a minimum of 25 years. The same income limitations apply to both exemptions.

In 2012, the legislature passed a bill that would automatically implement this amendment upon voter approval.[12] However, a drafting oversight eliminated the "up to" language for the existing exemption. Technically, the current statute would now allow cities and counties to offer an additional exemption to certain low income seniors of $50,000 only. This oversight was inadvertent.

Proposed Change

The bill amends s. 196.075(2)(a), F.S., to reinsert the "up to" language and correct the 2012 drafting error.

[10] See Art. VII, sec. 6(d)(1) of the Florida Constitution and s. 196.075, F.S.
[11] Amendment 11, 2012 General Election. The amendment originated as CS/HJR 0169 (2012). The text of the amendment can be found on the website of the Florida Department of State at http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-89.pdf (last visited March 18, 2013).
[12] Ch. 2012-57, Laws of Florida.

Ad Valorem Tax Exemption – Affordable Housing Property

Current Situation

Since 1999, Florida has provided an ad valorem exemption for affordable housing property when the property is wholly-owned by a non-profit corporation that qualified as a charitable 501(c)(3) organization and meets certain other statutory requirements. In 2009,[13] the statute was amended to also allow property to qualify if it was owned by a limited liability partnership and the only general partner of the limited liability partnership was a non-profit corporation that qualified as a charitable 501(c)(3) organization. Since the change was enacted, several for-profit limited liability partnerships have restructured to take advantage of the tax exemption.

Proposed Change

The bill amends the affordable housing property exemption to remove the authority of a limited liability partnership that merely has a non-profit general partner that is a charitable 501(c)(3) organization to qualify for the exemption.

Educational Property

Current Situation

An educational institution and its property are exempt from ad valorem tax in Florida.[14] Educational institutions often separate their property into separate corporate entities for business planning purposes. In an effort to address this situation, Florida also exempts property that is not directly owned by the educational institution, as long as the property is used exclusively for educational purposes and is owned by the identical owners of the educational institution. A recent Attorney General's opinion concluded that this exemption does not apply when both the property and the educational institution are in separate corporations and those corporations are owned by the identical people.

Proposed Change

The bill extends the educational institution exemption to include situations when the property and the educational institution are owned by separate legal entities and those legal entities are owned by the identical people.

Effective Date

Except as otherwise expressly provided in the bill and except for the effective date section, which shall take effect upon the bill becoming a law, the bill shall take effect July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.047(1), F.S., clarifying that a commercial mail delivery postmark qualifies for determining when certain applications and returns have been officially filed.

Section 2: Creates s. 192.048, F.S., allowing property appraisers and value adjustment boards to transmit certain documents electronically with taxpayer consent.

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[13] The original 2009 legislation was ruled to have violated the unfunded mandate provision of the Florida Constitution, Article VII, section 18(a), and potentially the single subject rule of the Florida Constitution, Article III, section 6. See *City of Weston, Florida v. The Honorable Charlie Crist, et. al.*, 2009-CA-2639 (Fla. 1st Circuit 2010). The legislation was passed again in 2011. Ch. 2011-15, Laws of Florida.

[14] Section 196.198, F.S.

Section 3: Amends s. 193.122(2), F.S., requiring notices related to tax roll certification to be provided on property appraiser websites.

Section 4: Amends s. 193.155(3)(a) and (8), F.S., providing long-term lessees the ability to retain their homestead exemption and related assessment limitations and exemptions in certain instances.

Section 5: Amends s. 193.703(5) and (6), F.S., and creates s. 193.703(7), F.S., allowing for an automatic renewal for "granny flat" assessment reductions.

Section 6: Amends s. 196.031(1), F.S., eliminating an unconstitutional requirement to qualify for a homestead exemption.

Section 7: Amends s. 196.075(2), F.S., fixing a glitch related to the implementation of amendment 11, approved by the voters in November, 2012.

Section 8: Amends s. 196.082(1) and (3), F.S., removing a residency requirement that a senior disabled veteran must have been a Florida resident at the time they entered the service to qualify for certain property tax exemptions.

Section 9: Amends s. 196.1978, F.S., repealing the ability for limited liability partnerships to qualify for the affordable housing property tax exemption.

Section 10: Amends s. 196.198, F.S., exempting property used for educational purposes when the entities that own the property and the educational facility are commonly owned.

Section 11: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference (REC) has estimated impacts of the three provisions in the bill expected to have a revenue impact on local government. The provision related to property used for educational purposes would have a recurring negative impact of -$0.1 million beginning in FY 2014-15. The provision related to affordable housing would have a positive impact in FY 2013-14 of $23.4 million ($117.2 million recurring). The provisions relating to living quarters for a parent or a grandparent are expected to have a positive insignificant impact.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because parts of the bill may have a negative fiscal impact on local government revenues. However, an exemption may apply because the fiscal impact on local governments related to those parts of the bill appears to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ad valorem taxation; amending s. 192.047, F.S.; providing that the postmark date of commercial mail delivery service is considered the date of filing for certain ad valorem applications or returns; creating s. 192.048, F.S.; allowing certain ad valorem communications to be sent electronically in lieu of first-class mail; providing requirements; amending s. 193.122, F.S.; requiring a property appraiser to publish notices of date of tax roll certifications and extensions on the property appraiser's website; amending s. 193.155, F.S.; providing that a change of ownership for purposes of assessing property at just value does not apply to lessees entitled to the homestead; extending the time for appealing a value adjustment board's denial of a taxpayer's application to transfer prior homestead assessment limitations to a new homestead; amending s. 193.703, F.S.; authorizing a county to waive the annual application requirement for a reduction in the assessed value of homestead property used to provide living quarters for the parents or grandparents of the owner or spouse of the owner; requiring the property owner to notify the property appraiser if the reduction no longer applies; providing for tax, penalty, and interest assessments if the property owner improperly received reductions; providing for liens; amending s. 196.031, F.S.; deleting the express

requirement that titleholders of homesteads live on the homestead in order to qualify for homestead tax exemption; amending s. 196.075, F.S.; clarifying that local governments that provide additional homestead exemptions to persons 65 and older may provide exemptions up to a certain amount; amending s. 196.082, F.S.; deleting the requirement that veterans be a resident of this state at the time of entering military service in order to qualify for the property tax discount for disabled veterans; amending s. 196.1978, F.S.; removing the ability of a general partner classified as a 501(c)(3) organization to qualify as a limited partnership for the affordable housing property tax exemption; providing for retroactive application; amending s. 196.198, F.S.; clarifying the ownership of property used for education purposes and exempt from ad valorem taxation; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 192.047, Florida Statutes, is amended to read:

192.047 Date of filing.—

(1) For the purposes of ad valorem tax administration, the date of an official United States Postal Service or commercial mail delivery service postmark on ~~of~~ an application for exemption, an application for special assessment classification,

or a return filed by mail is ~~shall be~~ considered the date of filing the application or return.

Section 2. Section 192.048, Florida Statutes, is created to read:

192.048 Electronic transmission.—

(1) Subject to subsection (2), the following documents may be transmitted electronically rather than by regular mail:

(a) The notice of proposed property taxes required under s. 200.069.

(b) The tax exemption renewal application required under s. 196.011(6)(a).

(c) The tax exemption renewal application required under s. 196.011(6)(b).

(d) A notification of an intent to deny a tax exemption required under s. 196.011(9)(e).

(e) The decision of the value adjustment board required under s. 194.034(2).

(2) Electronic transmission pursuant to this section is authorized only under the following conditions:

(a) The recipient consents in writing to receiving the document electronically;

(b) On the form used to obtain the recipient's written consent, the sender must include a statement in substantially the following form and in a font equal to or greater than the font used for the text requesting the recipient's consent: Notice: Under Florida law, e-mail addresses are public records. By consenting to communicate with this office electronically, your e-mail address will be released in response to any

applicable public records request;

(c) Before sending a document, the sender verifies the recipient's address by sending an electronic transmission to the recipient and receiving an affirmative response from the recipient verifying that the recipient's address is correct;

(d) If a document is returned as undeliverable, the sender must send the document by regular mail, as required by law;

(e) Documents sent pursuant to this section must comply with the same timing and form requirements as if the documents were sent by regular mail; and

(f) The sender renews the consent and verification requirements every 5 years.

Section 3. Subsection (2) of section 193.122, Florida Statutes, is amended to read:

193.122 Certificates of value adjustment board and property appraiser; extensions on the assessment rolls.—

(2) After the first certification of the tax rolls by the value adjustment board, the property appraiser shall make all required extensions on the rolls to show the tax attributable to all taxable property. Upon completion of these extensions, and upon satisfying himself or herself that all property is properly taxed, the property appraiser shall certify the tax rolls and shall within 1 week thereafter publish notice of the date and fact of extension and certification on the property appraiser's website and in a periodical meeting the requirements of s. 50.011 and publicly display a notice of the date of certification in the office of the property appraiser. The property appraiser shall also supply notice of the date of the

certification to any taxpayer who requests one in writing. These certificates and notices shall be made in the form required by the department and ~~shall be~~ attached to each roll as required by the department by rule ~~regulation~~.

Section 4. Paragraph (a) of subsection (3) and paragraph (1) of subsection (8) of section 193.155, Florida Statutes, are amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(3)(a) Except as provided in this subsection or subsection (8), property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change of ownership means 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:

1. Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

a. The transfer of title is to correct an error;

b. The transfer is between legal and equitable title or equitable and equitable title and no additional person applies

for a homestead exemption on the property; ~~or~~

c. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application is ~~shall be~~ considered a change of ownership; or

d. The person is a lessee entitled to the homestead exemption under s. 196.041(1).

2. Legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage;

3. The transfer occurs by operation of law to the surviving spouse or minor child or children under s. 732.401; or

4. Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and who is legally or naturally dependent upon the owner.

(8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the 2 immediately preceding years. A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008. For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall

each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(l) The property appraisers of the state shall, as soon as practicable after March 1 of each year and on or before July 1 of that year, carefully consider all applications for assessment under this subsection which have been filed in their respective offices on or before March 1 of that year. If, upon investigation, the property appraiser finds that the applicant is entitled to assessment under this subsection, the property appraiser shall make such entries upon the tax rolls of the county as are necessary to allow the assessment. If, after due consideration, the property appraiser finds that the applicant is not entitled ~~under the law~~ to the assessment under this subsection, the property appraiser shall immediately prepare ~~make out~~ a notice of such disapproval, giving his or her reasons therefor, and a copy of the notice must be served upon the applicant by the property appraiser ~~either~~ by personal delivery or by registered mail to the post office address given by the applicant. The applicant may appeal the decision of the property appraiser refusing to allow the assessment under this subsection to the value adjustment board, and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim and ~~shall~~ hear the applicant in person or by agent on behalf of his or her right to such assessment. Such appeal shall be heard by an attorney

special magistrate if the value adjustment board uses special magistrates. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant assessment under this subsection to the applicant if, in its judgment, the applicant is entitled to ~~be granted~~ the assessment or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant, within 60 ~~15~~ days following the date of refusal of the application by the board, files in the circuit court of the county in which the homestead is located a proceeding against the property appraiser for a declaratory judgment as is provided under ~~by~~ chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application as provided in this subsection does not constitute a ~~any~~ bar to or defense in the proceedings.

Section 5. Subsections (5) and (6) of section 193.703, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

193.703 Reduction in assessment for living quarters of parents or grandparents.—

(5) At the request of the property appraiser and by a majority vote of the county governing body, a county may waive the annual application requirement after the initial application is filed and the reduction is granted. Notwithstanding such waiver, an application is required if property granted a reduction is sold or otherwise disposed of, the ownership changes in any manner, the applicant for the reduction ceases to

use the property as his or her homestead, or the status of the owner changes so as to change the use of the property qualifying for the reduction pursuant to this section ~~If the owner of homestead property for which such a reduction in assessed value has been granted is found to have made any willfully false statement in the application for the reduction, the reduction shall be revoked, the owner is subject to a civil penalty of not more than $1,000, and the owner shall be disqualified from receiving any such reduction for a period of 5 years~~.

(6) The property owner shall notify the property appraiser when the property owner no longer qualifies for the reduction in assessed value for living quarters of parents or grandparents, and the previously excluded just value of such improvements as of the first January 1 after the improvements were substantially completed shall be added back to the assessed value of the property.

(7) If the property appraiser determines that for any year within the previous 10 years a property owner who was not entitled to a reduction in assessed value under this section was granted such reduction, the property appraiser shall serve on the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by that person and is situated in this state is subject to the taxes exempted by the improper reduction, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. However, if a reduction is improperly granted

due to a clerical mistake or omission by the property appraiser, the person who improperly received the reduction may not be assessed a penalty or interest. Before such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such lien is subject to s. 196.161(3).

Section 6. Subsection (1) of section 196.031, Florida Statutes, is amended to read:

196.031 Exemption of homesteads.—

(1)(a) A ~~Every~~ person who, on January 1, has the legal title or beneficial title in equity to real property in this state ~~and who resides thereon~~ and who in good faith makes the property ~~same~~ his or her permanent residence~~,~~ or the permanent residence of another or others legally or naturally dependent upon him or her ~~such person~~, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution. Such title may be held by the entireties, jointly, or in common with others, and the exemption may be apportioned among such of the owners as ~~shall~~ reside thereon, as their respective interests ~~shall~~ appear. If only one of the owners of an estate held by the entireties or held jointly with the right of survivorship resides on the property, that owner is allowed an exemption of up to the assessed valuation of $25,000 on the residence and contiguous real property. However, an ~~no such~~ exemption of more than $25,000 is not allowed to any one person or on any one dwelling house, except that an exemption up to the assessed valuation of $25,000 may be allowed on each

apartment or mobile home occupied by a tenant-stockholder or member of a cooperative corporation and on each condominium parcel occupied by its owner. Except for owners of an estate held by the entireties or held jointly with the right of survivorship, the amount of the exemption may not exceed the proportionate assessed valuation of all owners who reside on the property. Before such exemption may be granted, the deed or instrument shall be recorded in the official records of the county in which the property is located. The property appraiser may request the applicant to provide additional ownership documents to establish title.

(b) Every person who qualifies to receive the exemption provided in paragraph (a) is entitled to an additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies.

Section 7. Subsection (2) of section 196.075, Florida Statutes, as amended by section 1 of chapter 2012-57, Laws of Florida, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

(2) In accordance with s. 6(d), Art. VII of the State Constitution, the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow either or both of the following an additional homestead exemptions:

(a) Up to $50,000 ~~Fifty thousand dollars~~ for any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has

attained age 65, and whose household income does not exceed $20,000; or

(b) The amount of the assessed value of the property for any person who has the legal or equitable title to real estate with a just value less than $250,000 and has maintained thereon the permanent residence of the owner for at least 25 years, who has attained age 65, and whose household income does not exceed the income limitation prescribed in paragraph (a), as calculated in subsection (3).

Section 8. Subsections (1) and (3) of section 196.082, Florida Statutes, are amended to read:

196.082 Discounts for disabled veterans.—

(1) Each veteran who is age 65 or older and is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property that the veteran owns and resides in if:

(a) The disability was combat-related; and

~~(b) The veteran was a resident of this state at the time of entering the military service of the United States; and~~

(b) ~~(c)~~ The veteran was honorably discharged upon separation from military service.

(3) To qualify for the discount granted under this section, an applicant must submit to the county property appraiser by March 1:

~~(a) Proof of residency at the time of entering military service;~~

(a) ~~(b)~~ An official letter from the United States Department of Veterans Affairs which states the percentage of

the veteran's service-connected disability and evidence that reasonably identifies the disability as combat-related;

(b) ~~(c)~~ A copy of the veteran's honorable discharge; and

(c) ~~(d)~~ Proof of age as of January 1 of the year to which the discount will apply.

Any applicant who is qualified to receive a discount under this section and who fails to file an application by March 1 may file an application for the discount and may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the discount be granted. Such application and petition shall be subject to the same procedures as for exemptions set forth in s. 196.011(8).

Section 9. Effective upon this act becoming a law and applying retroactively to the 2013 tax roll, section 196.1978, Florida Statutes, is amended to read:

196.1978 Affordable housing property exemption.—Property used to provide affordable housing serving eligible persons as defined by s. 159.603~~(7)~~ and natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, which ~~property~~ is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, is ~~or a Florida-based limited partnership, the sole general partner of which is a corporation not for profit which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-~~

~~32, 1996-1 C.B. 717, shall be~~ considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property which provide housing to natural persons or families classified as extremely low income, very low income, low income, or moderate income under s. 420.0004 are ~~shall be~~ exempt from ad valorem taxation to the extent authorized in s. 196.196. All property identified in this section must ~~shall~~ comply with the criteria provided under s. 196.195 for determining ~~determination of~~ exempt status and ~~to be~~ applied by property appraisers on an annual basis ~~as defined in s. 196.195~~. The Legislature intends that any property owned by a limited liability company ~~or limited partnership~~ which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) ~~shall~~ be treated as owned by its sole member ~~or sole general partner~~.

Section 10. Section 196.198, Florida Statutes, is amended to read:

196.198 Educational property exemption.—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes is ~~shall be~~ exempt from taxation. Sheltered workshops providing rehabilitation and retraining of ~~disabled~~ individuals who have disabilities and exempted by a certificate under s. (d) of the federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in purpose and are exempt ~~shall be exempted~~ from certification, accreditation, and membership requirements set

forth in s. 196.012. Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process are ~~shall be~~ exempt from ad valorem taxation. The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and is ~~shall be~~ exempt from ad valorem taxation to the extent of such use. Property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property, or if the entity owning 100 percent of the educational institution and the entity owning the property are owned by the identical natural persons. Land, buildings, and other improvements to real property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the land is a nonprofit entity and the land is used, under a ground lease or other contractual arrangement, by an educational institution that owns the buildings and other improvements to the real property, is a nonprofit entity under s. 501(c)(3) of the Internal Revenue Code, and provides education limited to students in prekindergarten through grade 8. If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a

sublease or other contractual agreement with that lessee. If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution for purposes of this exemption. Property owned by an educational institution shall be deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee

Representative Tobia offered the following:

Amendment (with title amendment)

Between lines 96 and 97, insert:

Section 2. Section 193.074, Florida Statutes, is amended to read:

193.074 Confidentiality of returns.—All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order ~~or order of an administrative body having quasi-judicial powers in ad valorem tax matters,~~ and such returns are exempt from the provisions of s. 119.07(1).

Amendment No. 1

T I T L E A M E N D M E N T

Between lines 8 and 9, insert:

amending s. 193.074, F.S.; removing the authority of an administrative body having quasi-judicial powers in ad valorem tax matters from removing confidential status of certain confidential taxpayer information;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee

Representative Tobia offered the following:

Amendment (with title amendment)

Between lines 257 and 258, insert:

Section 6. Subsection (4) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(4)(a) At least 15 days before the hearing the petitioner shall provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. All evidence confidential under current law shall remain confidential until the evidence is submitted to the board for consideration and admission into the record.

(b) No later than ~~7~~ 10 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner a list of evidence to

be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. Documentation of evidence must include the property record cards for comparable property listed as evidence and a copy of the signed form on which the property appraiser reports, under s. 192.001(18), the adjustments made under s. 193.001(8). The evidence list must contain the property record card if provided by the clerk. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in ~~a rescheduling of the hearing~~ the exclusion of the property appraiser's evidence from consideration by the value adjustment board, unless good cause is shown. The term "good cause" means circumstances beyond the property appraiser's control. If good cause is shown, the special magistrate shall reschedule the hearing. If the property appraiser fails to submit evidence to the petitioner in compliance with the timeline established in this paragraph and good cause for such failure has not been shown, the special magistrate may enter a recommendation in favor of the petitioner, if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally accepted appraisal practices. A property appraiser's request for information in the tax roll development process is not to be construed as a request for information in the challenge of a proposed assessment, and the taxpayer's failure to provide such information shall not be grounds for exclusion of evidence.

(c) Provided it is relevant, rebuttal evidence may be submitted at the hearing by the petitioner and may be considered by the board and admitted into evidence.

T I T L E A M E N D M E N T

Remove line 28 and insert:

liens; amending s. 194.011(4), F.S., providing that all evidence confidential under current law shall remain confidential until the evidence is submitted to the value adjustment board for consideration and admission into the record; increasing the number of days before a value adjustment board hearing that the property appraiser is required to provide a list of evidence under specified circumstances; requiring specific documentation of evidence in certain circumstances; providing specified consequences for failure of the property appraiser to timely comply with the requirements of s. 194.011(4)(b), F.S.; providing that rebuttal evidence may be submitted at the hearing by the petitioner and may be considered by the board and admitted into evidence under specified circumstances; amending s. 196.031, F.S.; deleting the express