

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1649 Ad Valorem Taxation

SPONSOR(S): Ways & Means Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee		Berg	Aldridge

SUMMARY ANALYSIS

The bill, known as the “Taxpayer Empowerment Act,” makes various changes to the process of determining accurate assessments of property for the purpose of collecting ad valorem taxes.

The bill:

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

The bill has not been reviewed by the Revenue Estimating Conference this year. Based on review of similar language by the Revenue Estimating Conference last year, staff estimates that the bill may have a total impact on local government revenues in FY 2024-25 of \$0.0 cash and -\$38.1 million recurring.

The bill is effective July 1, 2024.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Overview of Property Taxation

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

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

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

Property Tax Exemptions for Homesteads

Statewide Homestead Exemption

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

Additional Homestead Exemptions

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

- An exemption not exceeding \$50,000 in home value for any low-income senior.¹³

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

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

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

¹² Section 196.031(1)(b), F.S.

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

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

Limitation on Annual Increases in Assessments for Homestead Properties

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

Improperly Granted Homestead Exemptions

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons improperly granted a homestead exemption. Section 196.161(1)(b), F.S., provides that if the property appraiser determines that a person was not entitled to a homestead exemption for any time within the prior 10 years, then the property appraiser must record a tax lien against the property. In addition to the property being liable for all taxes exempt, there is a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, penalties and interest are not due when the exemption was improperly granted as a result of a clerical error or an omission by the property appraiser.

Error in Assessments

If an error is made in the assessment of homestead property through either material mistake of fact by the property appraiser or new construction of which the property appraiser was not aware, the property appraiser must recalculate the just and assessed values for each year beginning with the year the mistake first occurred.²⁵ A property owner who has benefited from such a mistaken assessment may be subject to liability for unpaid back taxes.²⁶

The Value Adjustment Board Process

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

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

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

¹⁷ Sections 196.081 and 196.102, F.S.

¹⁸ Section 196.091(1) and (3), F.S.

¹⁹ Section 196.24, F.S.

²⁰ Section 196.081(4), (6) F.S.

²¹ Section 196.082, F.S.

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

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

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

²⁵ Section 193.155(9), F.S.

²⁶ Section 193.092, F.S.

Each county has a Value Adjustment Board (VAB), comprised of two members of the governing body of the county, one member of the school board, and two citizen members appointed by the governing body of the county.²⁷ The county clerk acts as the clerk of the VAB.²⁸ The VAB may meet for the following enumerated reasons:²⁹

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

A property owner may initiate an assessment valuation challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.³⁰

The clerk of the VAB will schedule the petition for a hearing, during which a special magistrate will hear testimony and make a recommendation to the VAB on how the petition should be resolved.³¹ The VAB renders a written decision within 20 calendar days after the last day the VAB is in session.³² The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.³³ The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.³⁴

Appeals of VAB Decisions

The property appraiser may appeal a decision of the VAB in circuit court if one of the following criteria are met:³⁵

- The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the VAB;
- There is a variance from the property appraiser's assessed value in excess of the following:
 - 20 percent variance from any assessment of \$250,000 or less;
 - 15 percent variance from any assessment in excess of \$250,000 but not in excess of \$1 million;
 - 10 percent variance from any assessment in excess of \$1 million but not in excess of \$2.5 million; or
 - 5 percent variance from any assessment in excess of \$2.5 million; or
- There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the VAB in its decisions.

An appeal by the property appraiser must be initiated either before the property appraiser extends the tax rolls following initial certification, or within 30 days of final recertification following an extension

²⁷ Section 194.015, F.S.

²⁸ *Id.*

²⁹ Section 194.032, F.S.

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

³¹ Section 194.035, F.S.

³² Section 194.034(2), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ Section 194.036, F.S.

which occurs prior to completion of VAB hearings.³⁶ An appeal by the taxpayer must be brought within 60 days from the date a decision is rendered by the VAB.³⁷

Effect of Proposed Changes

The bill amends s. 193.122, F.S., to provide that, when a county extends tax rolls prior to the completion of VAB hearings, a property appraiser must initiate an appeal of VAB decisions within 30 days of the decision, as opposed to within 30 days of final certification of tax rolls.

The bill amends s. 193.155, F.S., to provide that if an error is made in the assessment of homestead property by way of material mistake of fact by the property appraiser, the just and assessed value will be recalculated from the year of the mistake, but the recalculated value will first apply in the year the error was discovered, and the property owner will not be liable for back taxes.

The bill also provides that if unpermitted changes, additions, or improvements are not assessed on the first January 1st after they are substantially completed, the assessment may be corrected from the later of the year following substantial completion or ten years prior; the recalculated value will be first applied in the year the mistake is discovered; and no back taxes will be due.

Additionally, the bill provides that in the event that a property appraiser has improperly granted an assessment limitation under s. 193.155, F.S., as a result of clerical mistake or omission the property owner may not be assessed back taxes, penalty, or interest. Further, a property appraiser's error which grants an improper assessment limitation under s. 193.1554 or 193.1555, F.S.; or an exemption under s. 196.011, F.S.; will also not result in back taxes, penalty, or interest.

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

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

The bill may be cited as the "Taxpayer Empowerment Act."

The bill is effective January 1, 2024.

B. SECTION DIRECTORY:

- Section 1: Provides a short title for the bill.
- Section 2: Amends s. 193.122, F.S., relating to appeals of value adjustment board decisions by the property appraiser.
- Section 3: Amends s. 193.155, F.S., relating to corrections to erroneous assessments.
- Section 4: Amends s. 193.1554, F.S., relating to corrections to erroneous assessments.
- Section 5: Amends s. 193.1555, F.S., relating to corrections to erroneous assessments.
- Section 6: Amends s. 194.032, F.S., revising the types of appeals a value adjustment board may hear.
- Section 7: Amends s. 196.011, F.S., providing that taxpayers are not responsible for certain payments of back taxes, interest, or penalties if caused by a mistake of the property appraiser.

³⁶ Section 193.122(4), F.S.

³⁷ Section 194.171(2), F.S.

Section 8: Provides an effective date of July 1, 2024.

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 bill has not been reviewed by the Revenue Estimating Conference this year. Based on review of similar language by the Revenue Estimating Conference last year, staff estimates that the bill may have a total impact on local government revenues in FY 2024-25 of \$0.0 cash and -\$38.1 million recurring.

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 this bill reduces the situations in which back taxes, interest, and penalties are assessed. The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

