

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7097 PCB FTC 12-01 Administration of Property Taxes

SPONSOR(S): Economic Affairs Committee, Finance & Tax Committee, Caldwell

TIED BILLS: **IDEN./SIM. BILLS:** SPB 7036CS/SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	18 Y, 0 N	Aldridge	Langston
1) Economic Affairs Committee	16 Y, 0 N, As CS	Nelson	Tinker

SUMMARY ANALYSIS

CS/HB 7097 contains recommendations by the Department of Revenue for property tax oversight improvements. Among other things, the bill clarifies ambiguous language, deletes obsolete statutory provisions, and eliminates unneeded reporting requirements in the property tax statutes. The bill also:

- amends statutory requirements for scheduling value adjustment board hearings;
- allows a husband and wife who abandon jointly titled homestead property to designate the percentage attributed to each spouse of the differential between just (market) value and assessed value that is portable to a new homestead property;
- allows disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government;
- amends the current order in which homestead tax exemptions are to be applied to require that the base \$25,000 homestead exemption and the additional \$25,000 non-school levy homestead exemption (which applies to assessed value from \$50,001 to \$75,000) apply before all other homestead exemptions, which are then to be applied in a manner that results in the lowest taxable value;
- requires the property appraiser to mail an additional form along with the TRIM notice, upon request of the governing body of the county, that informs taxpayers of the portion of the proposed nonvoted county millage rate, which is attributable to each constitutional officer and the county commission; and
- provides that all property of municipalities is exempt from ad valorem taxation, effective retroactively to the 2012 tax roll, when used as an essential ancillary function of a facility constructed with financing obtained in part by pledging proceeds from the tax authorized under s. 212.0305(4), F.S., that is upon exempt or immune federal, state or county property.

Additionally, current law provides that the assessed value of certain nonhomestead property cannot increase by more than 10 percent over the prior year. The law requires such property to be assessed at just value (fair market value) when the property is "placed on the tax roll." The bill clarifies that property is to be assessed at just value when it is subject to a new assessment limitation. The bill also amends these provisions to provide that parcels combined or divided are not to be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. The bill further provides that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Except for the provisions relating to exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have no impact on state revenue and will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

The bill takes effect upon becoming law, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Locally elected officials administer Florida's property tax system. The Department of Revenue (Department) is responsible for general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes.¹ In this role, the Department from time-to-time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. Most of the statutory changes in this bill were suggested by the Department, and approved by the Governor and Cabinet, to address these types of issues.

Definitions

Present Situation

Section 192.001, F.S., defines terms used in the statutes imposing ad valorem taxes. Some of these definitions have not been amended to conform to other statutory and constitutional changes.

Proposed Changes

This bill amends the definition of "assessed value of property" to make it consistent with Art.VII of the State Constitution, as amended in 2008. It also amends the definition of "complete submission of the rolls" to conform to s. 193.114, F.S., as amended in 2008.

Value Adjustment Board Hearing Wait Time Limit

Present Situation

Taxpayers have the right to petition the value adjustment board (VAB) over objections to their property tax assessments, denial of homestead or other property tax exemptions, and appeals concerning property tax deferrals and classifications.² Section 194.032, F.S., outlines the timetable and procedure for VAB hearings. Taxpayers previously were required to exhaust their administrative remedies prior to filing an action in circuit court related to these matters.³ There is a vestige of this prior requirement in s. 194.032, F.S., whereby taxpayers who had waited four hours after the scheduled hearing time would be deemed to have exhausted their administrative remedies and thereby be permitted to file an action in circuit court.

Proposed Change

The bill amends the VAB hearing procedure in s. 194.032, F.S., and limits the amount of time a petitioner may be required to wait for his or her hearing after the scheduled time to "a reasonable time, not to exceed 2 hours." If the hearing is not commenced within this time, the petitioner may leave and the clerk must reschedule the hearing, though this rescheduled hearing is not counted against the taxpayer's one-time right to reschedule a hearing for any reason.⁴ The bill also amends the "Taxpayer's

¹ Section 194.011, F.S.

² Sections 194.011 and 194.032, F.S.

³ *See, Stiles v. Brown*, 177 So.2d 672 (Fla.App.1965), affirmed 182 So.2d 612 (Fla. 1966), finding that appearance before the Board of Equalization (predecessor of the current VABs) was a necessary "exhaustion of administrative remedies" and a prerequisite to filing a lawsuit. *See, also* ch. 80-274, L.O.F., which added language now contained in s. 194.034(1)(b), F.S., that legislatively eliminated that prerequisite: (b) Nothing herein shall preclude an aggrieved taxpayer from contesting his or her assessment in the manner provided by s. 194.171, whether or not he or she has initiated an action pursuant to s. 194.011.

⁴ Taxpayers may reschedule their VAB hearing one time for any reason. *See*, s. 194.032(2), F.S.

Bill of Rights” in s. 192.0105(2)(d), F.S., to conform to the amendments in s. 194.032, F.S., described here.

Repeal of the Property Tax Administration Task Force

Present Situation

The Property Tax Administration Task Force was created in s. 192.117, F.S., in 2001 for the purpose of serving as a forum for bringing issues in property tax administration to the Department, of providing and evaluating suggestions for improving the property tax administration process, and of promoting greater understanding of property tax administration issues. Under s. 20.03(8), F.S., a task force created by statute can exist for a maximum of three years. Accordingly, this task force was dissolved in 2004, rendering s. 192.117, F.S., obsolete.

Proposed Change

The bill repeals s. 192.117, F.S.

Real Property Assessment Roll Components

Present Situation

Section 193.114(2), F.S., provides a list of items that must be included on the real property assessment roll prepared by the property appraiser. Among these items, paragraph (n) requires the sale price, sale date, and basis for qualification or disqualification for an arms-length transaction for each sale of the property in the previous year to be included on the roll. Paragraph (p), requires the name and address of the owner or fiduciary responsible for the payment of taxes on the property.

Proposed Change

The bill amends s. 193.114(2)(n), F.S., to replace the term “sale price” with “recorded selling price,” clarifying that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. “Sale date” is replaced with “ownership transfer date” to clarify that all real property transfers recorded or otherwise discovered during the period beginning one year before the assessment date, and up to the date the roll is submitted to the department, must be included on the roll. “Ownership transfer date” is defined as the date that the deed or other transfer instrument is signed and notarized or otherwise executed.

The bill also amends s. 193.114(2)(p), F.S., to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Homestead Assessments

Present Situation

Section 193.155, F.S., provides for homestead assessments. Currently, if two or more persons abandon jointly owned and titled homestead property, and one or more such persons who received a homestead exemption establish a new homestead, each person is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus its assessed value divided by the number of such owners, unless the title of the property contains specific ownership shares, in which case the reduction is proportionate.

Proposed Change

The bill amends s. 193.155, F.S., to provide that a husband and wife who abandon jointly titled homestead property may designate the percentage attributed to each spouse of the differential between just (market) value and assessed value that is portable to a new homestead property. The

parties must be husband and wife at the time that the jointly owned property is abandoned. They must file a form with the property appraiser prior to either person applying for the portable differential, and the designation, once made, is irrevocable.

Assessment of Nonhomestead Residential Property; Assessment of Certain Residential and Nonresidential Real Property

Present Situation

Sections 4(g) and (h), Art. VII of the State Constitution, provide, among other things, that the assessed value of certain nonhomestead property cannot increase more than 10 percent over the prior year. These provisions are implemented in ss. 193.1554 and 193.1555, F.S. Both sections require property to be assessed at just value (fair market value) when the property is “placed on the tax roll.” The Department has interpreted this language to apply to situations where property that was already on the roll changes classifications, such as from homestead to nonhomestead, although this interpretation is currently being litigated.⁵

Sections 193.1554 and 193.1555, F.S., also govern how such property is assessed when parcels are merged or split. However, these provisions do not specify how an increase in the just value from combining or dividing the parcels should be calculated and apportioned.

Proposed Change

The bill amends ss. 193.1554, F.S., and 193.1555, F.S., to clarify that property is to be assessed at just value when it is subject to a new limitation. The bill also amends these provisions to provide that parcels combined or divided in this section cannot be included as such on the tax notice until the following January 1 on which it is first assessed as a combined or divided parcel. These sections further provide that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Reporting for Certain Tax Liabilities by Tax Collectors

Present Situation

Sections 193.501, 193.503, and 193.505, F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively.⁶ These provisions require repayment of the amount of reduced liability if the qualifying use is not maintained for the required period. Tax collectors must annually report to the Department the amount of repayments made under these sections.

Proposed Change

These provisions are amended to remove the reporting requirement.

Notification of Value Adjustment Board’s Decision

Present Situation

⁵ In *Sommers v. Orange Cnty. Prop. Appraiser*, No. 2010-CA-012489-O (Fla. 9th Cir. Ct. 2010), *pending appeal*, the Ninth Judicial Circuit Court ruled that the Sommers were entitled to the 10 percent assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in s. 193.1554(3), F.S. This ruling is being appealed. See, Case No. 5D11-240 (Fla. 5th DCA).

⁶ Constitutional authority provided in ss. 3(f) and 4(b) of Art. VII.

Section 194.034(2), F.S., provides that when a petitioner challenges a property assessment through the VAB, and the VAB is required to render a written decision, the clerk is required to mail a notification of the decision to various parties, including the Department.

Proposed Change

The bill amends s. 194.034(2), F.S., by removing the clerk's duty to notify the Department of every decision of the board. In place of that requirement, the bill provides that the clerk must provide a copy of the decision (or information relating to the tax impact of the findings and results as provided in s.194.037, F.S.) to the Department upon its request.

Department's Review of Assessment Rolls

Present Situation

The Department is required to conduct an in-depth review of the assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county officials.⁷ Statistical sampling used in the review of assessment rolls must meet a 95 percent confidence level. However, in some instances, there is insufficient data to meet the 95 percent confidence level standard.

Section 195.0985, F.S., requires the Department to annually publish sales ratio studies for counties after approving the tax roll assessments in those counties.

Proposed Change

The bill amends s. 195.096(2), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the 95 percent confidence level requirement, when a 95 percent level of confidence is not attainable. Instead of being required to forward the findings to the Senate and the House of Representatives committees with oversight responsibilities, the bill directs the Department to publish its findings and notify legislative staff and county officials that such publication has occurred. Copies of the data and findings will be provided upon request.

This bill also repeals s. 195.0985, F.S., eliminating a redundant requirement.

Department's Review of Assessments for Certain Businesses

Present Situation

Section 195.099, F.S., requires the Department to periodically review the assessments of new, rebuilt and expanded businesses in designated enterprise zones⁸ or brownfield areas.⁹

Proposed Change

The bill amends this provision to remove the Department's mandatory review requirement and, instead, permits the Department to review these assessments.

Tax Exemption of Homesteads

Present Situation

⁷ Section 195.096(2), F.S.

⁸ Section 193.077(3), F.S.

⁹ Section 196.1995, F.S.

Section 196.031(7), F.S., specifies the order in which various exemptions are applied to homestead property that is not totally exempt from ad valorem taxation. Under current law, the order of exemptions could result in some properties not being able to take full advantage of all the exemptions.

Proposed Change

The bill amends s. 196.031(7), F.S., to require that the base \$25,000 homestead exemption and the additional \$25,000 non-school levy homestead exemption (which applies to assessed value from \$50,001 to \$75,000) apply before all other homestead exemptions, which are then to be applied in a manner that results in the lowest taxable value.

Delay in Disability Exemption

Present Situation

Sections 196.081, 196.082, 196.091, 196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled and disabled servicemembers or surviving spouses under certain conditions. To qualify for these discounts and exemptions, a taxpayer must first provide evidence of the disability by obtaining certification of the disability from specified sources, depending upon the specific discount or exemption, such as the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration. The taxpayer may not receive a discount or exemption until the letter is obtained. In some instances, taxpayers have lost the ability to claim discounts and exemptions because the receipt of the documentation was delayed.

Proposed Change

The bill amends these sections to allow a taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer receiving the necessary documentation. Once the documentation is received by the property appraiser, the exemption is granted back to the date of the original application and a refund of excess tax payments is made. The refund is only permitted for years that are within the normal four-year statute of limitations for property tax refunds.

Printed Forms for Tax Exemptions

Present Situation

Section 196.121(1), F.S., requires the Department to furnish hard-copy, printed forms to the property appraiser of each county for taxpayers to use when claiming a homestead exemption.

Proposed Change

This bill amends s. 196.121(1), F.S., by removing the requirement that the Department provide printed forms; in its place, the bill provides that the Department provide the forms by electronic means or other methods designated by the Department.

Government Property Exemptions from Tax

Present Situation

Section 196.199, F.S., contains the statutory provisions related to exemption from property tax of certain government-owned property.

Section 212.0305(4), F.S., authorizes certain counties to levy convention development taxes on transient rental transactions. Generally, the revenues may be used for capital construction of

convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary according to the particular levy.¹⁰

Proposed Change

The bill adds language to s. 196.199(1), F.S., that provides that all property of municipalities of this state shall be exempt from ad valorem taxation when used as an essential ancillary function of a facility constructed with financing obtained in part by pledging proceeds from the tax authorized under s. 212.0305(4), F.S., that is upon exempt or immune federal, state or county facility, or property.

See, the III. COMMENTS, A. CONSTITUTIONAL ISSUES, portion of this analysis regarding the proposed exemption.

Method for Fixing Millage; Notice of Intent to Levy Additional Taxes

Present Situation

Section 200.065, F.S., provides the method for fixing the maximum millage rate that local governments can levy. To determine this maximum rate, the section refers to the prior year's rate and sets the cap at the rate that would have been levied in the prior year if the maximum millage rate had been applied, *unless a higher rate is adopted*.¹¹ In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that millage rate, causing uncertainty in the phrase's meaning.

Additionally, this section requires that a district school board publish notice of intent to levy additional taxes under s. 1011.71(2), F.S. Since 2008,¹² district school boards have also been able to levy additional taxes pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(10), F.S., do not reference those levies.

Proposed Change

The bill amends s. 200.065(5), F.S., by replacing "is adopted" with "was adopted." The bill also amends the notice requirement in s. 200.065(10), F.S., to require the district school board to publish a notice of intent to levy additional taxes under s. 1011.71(3), F.S.

Notice of Proposed Property Taxes

Present Situation

Section 200.069, F.S., provides the statutory provisions related to The Notice of Proposed Property Taxes, also known as the TRIM notice, which enables taxpayers to compare the prior year assessed value and taxes with the present year assessed value and proposed taxes for the upcoming year. The TRIM notice lists the date, time and location of all budget hearings at which the taxing authorities will hear from the public. The notice also shows the deadline for filing a petition to protest the assessment. Taxing authorities establish the millage to be levied against a parcel of land shown on the TRIM notice at budget hearings.

Proposed Change

The bill amends s. 200.069, F.S., to require that the property appraiser mail an additional form along with the TRIM notice, upon request of the governing body of the county. Any costs related to this form

¹⁰ Section 212.0305(4)(a), F.S., authorizes the consolidated county convention development tax (applicable to Duval County), s. 212.0305(4)(b), F.S., authorizes the charter county development tax (applicable to Miami-Dade County) and s. 212.0305(4)(c)-(e), F.S., authorize the special district, special and subcounty convention development taxes respectively (these apply in three separate taxing districts in Volusia County).

¹¹ Section 200.065(5), F.S.

¹² Chapter 2008-142, L.O.F.

are borne by the county. The form may include information regarding the proposed budget for the county, inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission, and include:

- the dollar value of proposed nonvoted property tax funding for each constitutional officer and the county commission;
- the percent of the total nonvoted property tax revenues designated for each constitutional officer and the county commission in the proposed budget; and
- the proposed nonvoted millage rate for each constitutional officer and the county commission, calculated by multiplying the percent of the total nonvoted property tax revenues designated for each entity by the county's proposed nonvoted millage rate.

Fiscally Constrained County Distribution

Present Situation

Sections 218.12 and 218.125, F.S., direct the Legislature to appropriate moneys to be distributed to fiscally constrained counties¹³ to offset reductions in ad valorem tax revenue experienced as a result of certain amendments to Article VII of the State Constitution in 2008.¹⁴ These provisions contain an application process for such fiscally constrained counties, including documentation requirements that require counties to report their maximum millage under s. 200.185, F.S. This citation is incorrect. Additionally, distributions under these sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than using the current year's millage rate.

Proposed Change

The bill corrects the maximum millage calculation reference to s. 200.065(5), F.S., and the calculation of the distribution is corrected to be based on the current year millage. The bill also provides that if a fiscally constrained county fails to apply for the distribution, its share reverts to the fund from which the appropriation was made.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.001(2) and (18), F.S., redefining the terms "assessed value of property" and "complete submission on the rolls."

Section 2: Amends s. 192.0105(2)(d), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.

Section 3: Repeals s. 192.117, F.S., the "Property Tax Administrative Task Force," in accordance with s. 20.38, F.S.

Section 4: Amends s. 193.114(2)(n) and (p), F.S., replacing terms that describe what should be included on the real property assessment roll, and removing the requirement that the name and address of the fiduciary responsible for the payment of the taxes on the property be included on the roll.

Section 5: Amends s. 193.155 (8), F.S., providing that a husband and wife who abandon jointly titled homestead property may designate the percentage of the differential between just (market) value and assessed value that is portable to a new homestead property.

¹³ Defined in s. 218.67(1), F.S.

¹⁴ Am. C.S. for S.J.R. 2-D, 2007; adopted Jan. 2008 (providing, inter alia, a 10 percent cap on increase of assessed value of nonhomestead residential real property); Ams. Proposed by Taxation and Budget Reform Commission, Revision No. 4, 2008, filed with the Secretary of State April 28, 2008; adopted Nov. 2008 (providing exemptions and limitations on the assessed value of property held in perpetuity for conservation purposes and used for conservation purposes).

- Section 6: Amends s. 193.1554 (2), (3) and (7), F.S., providing that nonhomestead residential property is to be assessed at just value when it is subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 7: Amends s. 193.1555(1), (2), (3) and (7), F.S., providing that certain residential and nonresidential real property is to be assessed at just value when it is subject to a new assessment limitation; providing how any increase in value of property assessed under this section which is attributable to combining or dividing parcels should be apportioned.
- Section 8: Amends s. 193.501(7), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 9: Amends s. 193.503(9)(d), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 10: Amends s. 193.505(9)(c), F.S., removing the provision requiring the tax collector to annually report to the Department the amount of deferred tax liability collected pursuant to this section.
- Section 11: Amends s. 194.032(2), F.S., limiting the amount of time a petitioner may be required to wait for a VAB hearing.
- Section 12: Amends s. 194.034(2), F.S., removing the clerk's duty to notify the Department of every VAB decision, and providing that the clerk furnish a copy of the decision upon the request of the Department.
- Section 13: Amends s. 195.096(2) and (3), F.S., allowing the Department to use ratio study standards that are generally accepted by professional appraisal organizations in lieu of the current 95 percent confidence level requirement.
- Section 14: Repeals s. 195.0985, F.S., which requires the Department to annually publish sales ratio studies for counties after approving the tax assessment roll in those counties.
- Section 15: Amends s. 195.099(1) and (2), F.S., removing the Department's mandatory review requirement and, in its place, permits the Department to review assessments of new, rebuilt and expanded businesses that meet certain exemptions.
- Section 16: Amends s. 196.031(7), F.S., requiring the exemptions applied to homestead property not totally exempt from ad valorem taxation to be applied in a manner that results in the lowest taxable value.
- Section 17: Amends s. 196.081, F.S., allowing certain permanently and totally disabled veterans and surviving spouses of veterans to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S.
- Section 18: Amends s. 196.082, F.S., allowing disabled veterans to apply for a property tax discount prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the discount and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S..

- Section 19: Amends s. 196.091, F.S., allowing disabled veterans confined to wheelchairs to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S.
- Section 20: Amends s. 196.101, F.S., allowing totally and permanently disabled persons to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S.
- Section 21: Amends s. 196.121(1), F.S., removing the requirement that the Department provide printed forms; requiring the Department to provide the forms by electronic means or other methods designated by the Department.
- Section 22: Amends s. 196.199(1), F.S., providing that all property of municipalities of the state are exempt from ad valorem taxation when used as an essential ancillary function of a facility constructed with financing obtained in part by pledging proceeds from the tax authorized under s. 212.0305(4), F.S., that is upon exempt or immune federal, state or county facility, or property.
- Section 23: Provides an unnumbered provision of law that retroactively applies the exemption created by section 22 of the bill to the 2012 tax roll.
- Section 24: Amends s. 196.202, F.S., allowing widows, widowers, blind persons and persons totally and permanently disabled to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S.
- Section 25: Amends s. 196.24, F.S., allowing a disabled ex-servicemember or surviving spouse to apply for an exemption prior to receiving the necessary documentation from the federal government evidencing the disability. Approval of the exemption and a refund of excess tax payments made will follow receipt of the necessary documentation, subject to the four-year period of limitation in s. 197.182(1)(e), F.S.
- Section 26: Amends s. 200.065 (5) and (10), F.S., correcting an apparent drafting error and requiring the district school board to publish notice of intent to levy additional taxes under s. 1011.71(3), F.S.
- Section 27: Amends s. 200.069, F.S., to require the property appraiser to mail an additional form along with the "TRIM" notice, upon request of the governing body of the county that may include information regarding the proposed budget for the county to inform taxpayers of the portion of the proposed nonvoted county millage rate which is attributable to each constitutional officer and the county commission.
- Section 28: Amends s. 218.12(2), F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.
- Section 29: Amends s. 218.125 (2), F.S., changing a maximum millage rate cross-reference, replacing the year's millage rate to be multiplied against a county's current reduction in ad valorem taxation, and stating what will happen to unused funds if a fiscally constrained county fails to apply for the distribution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have no impact on state revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Except for the provisions relating to certain exemption of government-owned property, which staff estimates will have a negative, but unknown local revenue impact, the Revenue Estimating Conference estimated that the bill will have a negative recurring impact on local revenue of \$0.6 million, beginning in FY 2012-13.

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:

The county/municipality mandates provision of s. 18, Art. VII of the State Constitution may apply because this bill would reduce a county or municipality's authority to raise revenue in the aggregate; however, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of s. 18, Art. VII of the State Constitution.

2. Other:

Section 21 of this bill, which provides a tax exemption for municipal property used as an "essential ancillary function" of a facility constructed with financing obtained by pledging proceeds of the convention development tax on transient rentals, appears to be drafted in an attempt to resolve a disagreement between the City of Miami and Miami-Dade County regarding the taxation of a parking garage.

On March 3, 2008, Miami-Dade County, the City and the Florida Marlins executed a "Baseball Stadium Agreement" outlining the general terms and conditions under which they would design, develop, construct and operate a Major League baseball stadium and related parking facilities. The

agreement provided for the construction and operation of parking facilities to be made available to users of the baseball stadium.

A "City Parking Agreement" was entered into between the City of Miami and the Marlins on April 15, 2009. This 20-year contract gives the City the exclusive right, authority and responsibility to operate, manage, maintain and control the parking facilities, through the Miami Parking Authority, on a year-round basis. These rights and responsibilities include employing and supervising all personnel including cashiers, maintenance crews and security, and procuring and entering into contracts for the furnishing of all utilities, equipment, services and supplies necessary for the operation of the parking facilities. However, the contract also gives the Marlins prior and exclusive use of all of the spaces in the garages for Major League Baseball events, and other unspecified activities. The Marlins are required to pay the City an amount representing the purchase of the "Available Number of Parking Spaces," for each regular season game played at the stadium (81 home games a year). According to the contract, these spaces "shall not exceed 5,750." The Marlins have agreed to pay the City \$10.30 per parking space, and in turn, can set the price that the spaces are sold to fans, and retain all revenues. The Marlins, who have exclusive right to enter into agreements with respect to advertising rights, also must pay the City 50 percent of all net revenues, excluding certain expenses.¹⁵

The entire facility is scheduled to open this spring, and the Miami-Dade property appraiser has advised that the arrangement between the City and the Marlins amounts to a private enterprise operating on public property, and thus, the parking garages are subject to ad valorem taxation.

Miami maintains that it should not have to pay property taxes on the four parking garages. City officials argue that the garages are integral to the stadium, that the garages should be considered a benefit to the public, and that the County agreed that the parking garages should be tax-exempt when the ballpark deal initially was negotiated. The City has no written records supporting that position, and Article 5.3 of the parking agreement provides that, except as otherwise provided, the City is responsible for the payment of all expenses and taxes relating to the parking premises. Additionally, the City has argued that the parking garages, located in an area in East Little Havana surrounded by dilapidated public housing and little or no commercial retail, are open to the public when not being used by the Marlins.¹⁶

The City and the County apparently are in the midst of debating this issue, with the tax collector having until June or July to make a decision.¹⁷ It has been estimated that the taxes will amount to \$1.2 million. Apparently, the City and County agree that 53,000 square feet of commercial space in the parking garages anticipated to be leased for dining, drinking and retail establishments are subject to property taxes.¹⁸

Section 4 of Art. VII of the State Constitution requires a "just valuation of all property for ad valorem taxation...." However, governmentally-owned property generally is excluded from taxation through immunity or exemption. While the state and counties are immune from taxation, municipalities are not subdivisions of the state and are subject to taxation absent an exemption.

Section 3(a), Art. VII of the State Constitution provides:

All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

¹⁵ City Parking Agreement, the City of Miami, Miami-Dade County and Marlins Stadium Operator, LLC, April 2009.

¹⁶ <http://www.miamiherald.com/2011/12/24/v-print/2560785/miami-wrangles-over-marlins-stadium.html>.

¹⁷ Telephone conversation with Veronica A. Xiques, Assistant City Attorney, City of Miami, on February 17, 2012.

¹⁸ <http://www.miamiherald.com/2011/11/21/v-fullstory/2515040/miami-may-have-to-pay-property.html>.

This standard requires that exempt property must both be owned by a municipality and used exclusively by the municipality for municipal or public purposes. The “municipal or public purposes” for which municipally-owned property must be exclusively used to qualify for an ad valorem tax exemption under the State Constitution encompass activities that are essential to the health, morals, safety, and general welfare of the people within the municipality. *Florida Dept. of Revenue v. City of Gainesville*, 918 So.2d 250 (2005).¹⁹

The Legislature is without authority to grant an exemption from taxes where the exemption has no constitutional basis. See, *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001), where the Florida Supreme Court held a portion of s. 196.012(6), F.S., (Supp. 1994) unconstitutional that created an ad valorem tax exemption for governmental property leased for use in profit-making endeavors such as convention and visitor centers, sports facilities, concert halls, arenas and stadiums, parks or beaches. The exemption defined these types of activities as serving “a governmental, municipal, or public purpose or function.”

In the instant case, it appears that the Legislature is creating a similar exemption, i.e., that it is statutorily providing an exemption for municipal property that is not used exclusively for municipal or public purposes, and that this exemption could be subject to constitutional challenge.

While it appears that the city has not “leased” the parking garages, and that it retains control of the facility, the determinative factor would be the city’s use of the property, and whether that use serves a public purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the Finance & Tax Committee adopted an amendment that:

- clarifies a provision in the bill relating to the order of homestead property tax exemptions by requiring that the \$25,000 base homestead exemption and the additional \$25,000 non-school levy homestead exemption (which applies to assessed value from \$50,001 to \$75,000) apply before all other homestead exemptions, which are to be applied in the order providing the greatest tax benefit to the taxpayer; and
- clarifies and narrows a provision in the bill providing an additional property tax exemption to certain municipally owned property.

The analysis has been updated to reflect the amended bill.

On February 22, 2012, the Economic Affairs Committee adopted two amendments.

The first amendment provides that a husband and wife who abandon jointly titled homestead property may designate the percentage attributed to each spouse of the differential between just (market) value and assessed value that is portable to a new homestead property.

The second amendment provides that the additional exemption provided in the bill for certain municipally-owned property applies retroactively to the 2012 tax roll.

¹⁹ No portions of the property at issue are to be used for an educational, literary, scientific, religious or charitable purpose, so a “predominant” use analysis would not apply.