

STORAGE NAME: h1161z.ca

DATE: May 16, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: HB 1161

RELATING TO: Tangible Personal Property

SPONSOR(S): Representative Lacasa and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC) YEAS 6 NAYS 2
 - (2) FINANCE & TAXATION (FRC) (W/D)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Although the provisions of HB 1161 were not passed by the Legislature, CS/SB 290, 2nd Eng., which passed the Legislature, includes a provision that is comparable to HB 1161.

HB 1161 requires a property appraiser to use, in subsequent years, a method of valuation consistent with the value adjustment board's (VAB) decision in a previous year if the VAB reduced the property appraiser's assessment of tangible personal property and the VAB's decision was not successfully appealed by the property appraiser.

This bill has no fiscal impact on state government. The Revenue Estimating Conference projects a recurring negative fiscal impact of (\$5 million) in reduced ad valorem tax collections. The bill appears to reduce the authority municipalities and counties have to raise revenue.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Ad Valorem Taxing Authority

The Florida Constitution provides that counties, school districts, and municipalities must be authorized by law to levy ad valorem taxes. (Fla. Const. art. VII, § 9.) Section 196.001, F.S., subjects the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; all personal property belonging to persons residing in this state; and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority or other public body corporate of the state.

Section 2, Article VII, of the Florida Constitution requires:

“All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . .”

Assessment of Property/Just Valuation

Section 4, Article VII, of the Florida Constitution requires:

“By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . .”

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

Section 192.001, F.S., defines "assessed value of property" to mean "an annual determination of the just or fair market value of an item of property." Section 192.042, F.S., requires all property to be assessed according to its just value as follows:

(1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

(2) Tangible personal property, on January 1, except construction work in progress shall have no value placed thereon until substantially completed as defined in s. 192.001(11)(d).

(3) Intangible personal property, according to the rules laid down in chapter 199.

Section 192.001(11)(d), F.S., defines "Tangible personal property" to mean

"all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

"Construction work in progress" consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition."

Section 193.011, F.S., directs property appraisers to take into consideration eight factors when deriving a just valuation of property. Briefly, these factors include:

1. The present cash value of the property, exclusive of reasonable fees and costs of purchase;
2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking all legal limitations imposed on the property into consideration;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of improvements;
6. The condition of the property;
7. The income from the property;
8. The net proceeds from the sale of the property, exclusive of reasonable fees and costs of the sale.

Although the statute outlines the factors that property appraisers are to consider in deriving just valuation, the Florida Supreme Court has ruled that the factors used and the weight

given to any factor or method of valuation is left to the discretion of the property appraiser. *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989).

Section 193.052, F.S., provides for taxpayers to file returns for tangible personal property. Returns are not required for real property when the ownership is reflected in instruments recorded in the public records unless a return is specifically required by other provisions in Title XIV of the Florida Statutes. Returns for tangible personal property must be filed by April 1 and must correctly reflect the owner's estimate of the value of the property. Section 193.073, F.S., addresses erroneous returns and assessments when no returns are filed. Subsection (2) provides that if no tangible personal property return is filed, the property appraiser may estimate from the best information available the assessment of the property. The subsection states that such an assessment shall be deemed to be prima facie correct.

Administrative and Judicial Review of Property Taxes

Chapter 194, F.S., governs administrative and judicial review of property taxes. Section 194.011, F.S., provides that any taxpayer who objects to the assessment placed on any property taxable to him or her may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his or her staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his or her representative at this conference must present those facts considered by the property appraiser to be supportive of the correctness of the assessment.

A taxpayer may also petition the county value adjustment board (VAB) for a review and decision on the assessment. The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser of the assessment. The VAB consists of three members of the governing body of the county and two members of the school board. The VAB is required to render a written decision on filed petitions. A taxpayer may also contest an assessment in circuit court pursuant to s. 194.171, F.S.

Section 194.036, F.S., provides if the property appraiser disagrees with the decision of the VAB, he or she may appeal the decision to the circuit court if one or more of the following criteria are met:

- The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the board, except that nothing herein shall authorize the property appraiser to institute any suit to challenge the validity of any portion of the constitution or of any duly enacted legislative act of this state;
- There is a variance from the property appraiser's assessed value in excess of the following: 15 percent variance from any assessment of \$50,000 or less; 10 percent variance from any assessment in excess of \$50,000 but not in excess of \$500,000; 7.5 percent variance from any assessment in excess of \$500,000 but not in excess of \$1 million; or 5 percent variance from any assessment in excess of \$1 million; or
- There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions.

Any taxpayer may bring an action to contest a tax assessment pursuant to s. 194.171, F.S. The circuit court proceeding shall be de novo, and the burden of proof shall be upon the party initiating the action.

Part III of chapter 194, F.S., consisting of section 194.301, F.S., provides that in any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment must be presumed correct. However, the presumption is lost if the taxpayer shows by a preponderance of the evidence that either the property appraiser has failed to consider properly the criteria in section 193.011, F.S., or that the property appraiser's assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied to comparable property within the same class and the same county.

If the presumption of correctness is lost, the taxpayer has the burden of proving by a preponderance of the evidence that the appraiser's assessment is in excess of just value. If the presumption of correctness is retained, the taxpayer has the burden of proving by clear and convincing evidence that the appraiser's assessment is in excess of just value. In no case does the taxpayer have the burden of proving that the assessment is not supported by any reasonable hypothesis of a legal assessment.

If the property appraiser's assessment is determined to be erroneous, the VAB or the court can establish the assessment if there exists competent substantial evidence in the record that meets the requirements of section 193.011, F.S. If the record lacks such evidence, the matter shall be remanded to the property appraiser with appropriate directions from the VAB or the court.

C. EFFECT OF PROPOSED CHANGES:

This bill requires a property appraiser to use, in subsequent years, a method of valuation consistent with the value adjustment board's (VAB) decision in a previous year if the VAB reduced the property appraiser's assessment of tangible personal property and the VAB's decision was not successfully appealed by the property appraiser.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 193.016, F.S., is created to provide that if the property appraiser's assessment of items of tangible personal property in the previous year was adjusted by the value adjustment board, and the property appraiser did not successfully appeal the decision of the board to reduce the assessment, the property appraiser, in assessing those items of tangible personal property in subsequent years, must use a method of valuation consistent with the value adjustment board's decision.

Section 2. An effective date of January 1, 2001, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no impact on state revenues.

2. Expenditures:

This bill has no impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference projects a recurring negative fiscal impact of \$5 million in reduced ad valorem tax collections.

2. Expenditures:

This bill may result in property appraisers incurring expenses associated with appeals of VAB decisions they might not initiate under current law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of tangible personal property affected by this bill will benefit from reduced appraisals and reduced costs associated with challenging appraisals. The bill could result in a shift in the property tax burden to other property owners.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill requires a property appraiser to use, in subsequent years, a method of valuation consistent with the VAB's decision in a previous year if the VAB reduced the property appraiser's assessment of tangible personal property and the VAB's decision was not successfully appealed by the property appraiser. It is anticipated this requirement will reduce assessments of such tangible personal property. Thus, the bill appears to reduce the authority municipalities and counties have to raise revenue. Article VII, Section 18(b) of the Florida Constitution provides:

Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

To the extent this bill requires property appraisers to use a single method of valuing property, to the exclusion of any other method, it is subject to constitutional challenge. The Florida Supreme Court has ruled:

“In arriving at fair market value, the assessor must consider, but not necessarily use, each of the factors set out in s. 193.011. The particular method of valuation, and the weight to be given each factor, is left to the discretion of the assessor, and his determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.”
Valencia Center Inc. v. Bystrom 543 So.2 214 (Fla. 1989)

In addition, to the extent the bill results in appraisals that are not just valuations, the bill is subject to constitutional challenge.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

Department of Revenue

The Department of Revenue (DOR) submitted an analysis of HB 1161. DOR's analysis includes the following comments regarding difficulties confronting a property appraiser in attempting to adhere to the provisions of this bill.

- The bill will permanently bind the property appraiser in all subsequent years to a method of valuation consistent with that used by the value adjustment board (VAB) if the VAB reduces an assessment of tangible personal property. There is no requirement under current law that the VAB disclose the method of valuation which it uses to arrive at a reduction of the property appraiser's assessment. Therefore, the property appraiser would have no guidelines as to which "method" of valuation he must use in arriving at any reduction by the VAB.
- Even if the bill were amended to require that the VAB disclose the method of valuation, there is no guarantee that the method used by the VAB in arriving at a reduced assessment would produce a "just value" assessment if used by the property appraiser in a subsequent year.
- In determining the just value of tangible personal property at any moment in time, the method used which best approximates just value in one year may not be the appropriate method to use in subsequent years, considering any change in the economic conditions used to approximate just value, such as supply and demand, rapid advancements in technology, production costs of equipment, etc.

DOR recommended the following changes to the bill:

On page 1, lines 13 through 22, strike all language on said lines and insert:

193.016 Property appraiser's assessment; effect of determinations by value adjustment boards.--

(1) If the property appraiser's assessment of items of tangible personal property in the previous year was adjusted by the value adjustment board, and the decision of the board to reduce the assessment was not appealed by the property appraiser, the property appraiser, in assessing those same items of tangible personal property in the subsequent year, must use the methodology used by the board to calculate the just value for those items of tangible personal property.

(2) It will not be necessary for the taxpayer to relitigate basic and underlying facts or methodology when challenging the subsequent assessment where:

(a) the basic and underlying facts and methodology of valuation used by the value adjustment board are clearly identified in its notice of decision for the previous year;

(b) the property appraiser did not appeal the value adjustment board's decision; and

(c) the property appraiser does not assert additional basic and underlying facts not properly considered by the value adjustment board, which would make the value adjustment board's decision inapplicable for the subsequent year.

Property Appraisers Association of Florida

A representative of the Property Appraisers Association of Florida indicates the Association opposes HB 1161.

Florida Association of Property Appraisers, Inc.

A representative of the Florida Association of Property Appraisers, Inc., indicates the Association opposes HB 1161.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Thomas L. Hamby

Staff Director:

Joan Highsmith-Smith

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Thomas L. Hamby

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