

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1576

SPONSOR: Finance and Taxation Committee and Senator Carlton

SUBJECT: Ad Valorem Tax Administration

DATE: April 10, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute addresses several issues identified by the Auditor General’s Performance Audit of the Administration of the Ad Valorem Program of the Department of Revenue. It requires the documentation and retention of records of the measures of representativeness and statistical reliability in in-depth studies; and requires, to the greatest extent practicable, substratification of assessment roll data by value group or market area to enhance the representativeness of ratio sample studies. This bill authorizes the tax collector to contract with a title company or an abstract company to provide a list of legal title holders and lienholders of record of property on which a tax deed application is made. It modifies the notice of proposed property taxes and non-ad valorem assessments to allow independent special districts to be listed separately, and it allows property appraiser to correct material mistakes of fact on assessments of homesteads. It provides that delinquent tax notices shall be sent out on April 30 instead of April 10, and amends s. 193.461, F.S., adding “boarding of livestock” to the list of agricultural purposes subject to assessment by classified use. I creates the Property Tax Administration Task Force for the purpose of serving as a forum for bringing issues in property tax administration to the Department of Revenue, of providing and evaluating suggestions for improving the property tax administration process, and of promoting greater understanding of property tax administration issues.

This bill substantially amends ss. 195.096, ,195.502, 197.343, 193.155, 200.069, and 193.461, F.S.

## II. Present Situation:

### Documentation of Ratio Studies and Value Group Stratification

Section 195.096, F.S., directs the Department of Revenue to conduct an in-depth review of the assessment rolls of each county no less frequently than every two years. In conducting

assessment ratio studies, the department must use a representative or statistically reliable sample of properties in its tests of each classification, stratum, or roll. Documentation of the criteria used to evaluate sample representativeness in in-depth studies was raised as an issue in the Auditor General's August 2000 report, and the Auditor General specifically recommended that the Legislature consider requiring the department to document in its official records the representativeness and statistical reliability of ratio sample studies. The Auditor General's report also indicated that the department's assessment ratio studies are performed using samples from a stratum without controlling for value or market area. As a result, samples may not be representative. The Auditor General recommended that the Legislature consider requiring substratification to enhance representativeness of assessment ratio study samples.

### **Title Searches and Sale of Property for Delinquent Taxes**

Chapter 197, F.S., is the exclusive method for enforcing liens created through the sale of tax certificates for unpaid ad valorem taxes and special assessments. Section 197.333, F.S., provides that all taxes are due and payable on November 1 of each year, or as soon thereafter as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 following the year in which they are assessed or immediately after 60 days have expired from the mailing of the original tax notice, whichever is later. Tax collectors have the authority and the obligation to collect all ad valorem taxes by the date of delinquency or to collect delinquent ad valorem taxes by sale of tax certificates on the real property. As defined in s. 197.102(3), F.S., a tax certificate is a legal document, representing unpaid delinquent real property taxes and related costs and charges, issued against a specific parcel of real property and becoming a first lien thereon, superior to all other liens.

Section 197.502, F.S., governs the process by which holders of tax certificates for real property obtain tax deeds through the sale of the property on which tax certificates are held. Generally, certificate holders may apply for a tax deed between two to seven years after the certificate was issued. To apply for the deed, certificate holders must pay to the tax collector all amounts required to redeem or purchase all other outstanding tax certificates, including omitted, delinquent and current taxes, and respective interest, applicable to the property.

Upon payment of required outstanding certificates, taxes, and interest, the tax collector must notify the clerk of court that the obligations have been satisfied and that the following persons be notified of the impending sale of the property:

- C legal title holders of the property;
- C any lienholders against the property;
- C any mortgagees of the property;
- C any vendee of a recorded contract for deed for the property or any vendee requesting to be notified;
- C any other lienholder requesting to be notified;
- C any person to whom the property was assessed on the tax roll for the year in which the property was last assessed; and
- C any lienholder who has recorded a lien against a mobile home located on the property described in the tax certificate, under certain conditions.

To identify such persons, the tax collector must conduct a title search on the property. While DOR rules authorized tax collectors to contract with a title abstract company to conduct the title search, there did not appear to be sufficient authority for the department to adopt such a rule, and the department has begun to repeal the rule.

### **Ch. 99-379, L.O.F. and Agency Rules**

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., required that each agency, by October 1, 1999 provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency was also to identify the language of the rule which exceeds this authority. The Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature considered, at the 2000 Regular Session, whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

By January 1, 2001, each agency was required to initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

DOR identified, in its October 1, 1999 submission to the Administrative Procedures Committee, the portion of two rules which appears to exceed the rulemaking authority permitted by s. 120.536, F.S. The rules identified are Rules 12D-13.060 and .061, F.A.C., which authorize tax

collectors to contract with a title company or an abstract company to provide a list of legal title holders and lienholders of record of property on which a tax deed application is made.

### **TRIM Notices**

Section 200.069, F.S., prescribes the form to be used for notices of proposed property taxes and non-ad valorem assessments (TRIM notices). A single entry is made for independent special districts, and a single entry is made for all voted levies for debt service applicable to the parcel. The form also includes a statement instructing the taxpayer to consult his or her tax collector for details on independent special districts and voter approved debt. By resolution, the governing body of the county, with the written concurrence of the property appraiser, may choose to report a separate line entry for each special taxing district.

### **Homestead Assessments**

Section 193.155, F.S., provides that if an error is made in the annual assessment of homestead property subject to subsection © of s. 4 of Art. VII of the Florida Constitution, the annual assessment must be recalculated for every year, but the base year assessment for such properties cannot be changed, even if it is discovered that the base year assessment contains a material mistake of fact concerning the property.

### **Delinquent Tax Notices**

Section 197.343, F.S., provides that an additional property tax notice shall be mailed by April 10 to each taxpayer whose payment has not been received.

### **Classification for Agricultural Purposes**

Section 193.461, F.S., directs the property appraiser annually to classify all lands within the county as agricultural or nonagricultural. Subsection (5) provides a list of agricultural purposes that apply to this section, which includes, but is not limited to, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture, when the land is used principally for the production of tropical fish, aquaculture, sod farming, and all farms of farm products and farm production.

### **Property Tax Administration Task Force**

The Department of Revenue created the Property Tax Administration Task Force in May 2000 to serve as a forum for raising issues and evaluating suggestions for improving property tax administration. Members were appointed representing business organizations, taxpayer groups, cities, counties, school districts, special districts, state government, and local elected officials. Section 20.03(8), F.S., provides that a task force can be appointed without specific statutory authority for a time period not to exceed one year. With statutory authority, a task force may be appointed for up to three years.

### III. Effect of Proposed Changes:

**Section 1** amends s. 195.096, F.S., to require the department to document and retain records of the measures of representativeness and statistical reliability employed in in-depth studies.

**Section 2** amends s. 195.096, F.S., effective January 1, 2003, to require, to the greatest extent practicable, substratification of assessment roll strata by value groups or market areas to improve the representativeness of ratio study samples.

**Section 3** amends s. 197.502, F.S., to authorize the tax collector to contract with a title company or an abstract company to provide information concerning ownership, lienholders, mortgagees, and interested vendees of property described in a tax certificate. To qualify for contract, the title company or an abstract company must be authorized to do business in Florida and must do the research for a reasonable fee, as determined by the tax collector. The tax collector is authorized to advertise and accept bids for the contract.

The title company or abstract company must print the resulting ownership and encumbrance report on paper showing a letterhead of the person, firm, or company that does the search, and the report must be signed by the person who does the search or an officer of the firm. The tax collector is prohibited from accepting or paying for any title search or abstract if no financial responsibility is assumed for the search.

In order to establish uniform prices, the tax collector must ensure that the contract for reports include all requests for title searches or abstracts for a given period of time. Fees for these title searches or abstracts must be collected when the tax deed is applied for, and the fee amount must be added to the opening bid of the property sale.

These provisions had been authorized by rule, but the department has determined that there is no specific statutory authority for such rule, and must continue with the repeal of the existing rule absent specific legislative action.

**Section 4** amends s. 200.069, F.S., amending the form of the TRIM notice to require that separate entries be shown for independent special districts and voted levies for debt service. It removes language instructing taxpayers to call their Tax Collectors for information about independent special districts and voter approved debt. It also removes a provision that had allowed the governing body of a county, with the written concurrence of the property appraiser, to include separate entries for independent special taxing districts.

**Section 5** amends s. 193.155, F.S., to allow the property appraiser to correct material mistakes of fact contained in the assessments of homestead properties.

**Section 6** amends s. 197.343, F.S., changing the date from April 10 to April 30 for notices to be sent to property taxpayers whose payment has not been received.

**Section 7** amends s. 193.461, F.S., to add "boarding of Livestock" to the list of agricultural purposes for this section.

**Section 8** creates the Property Tax Administration Task Force for the purpose of serving as a forum for bringing issues in property tax administration to the Department of Revenue, providing and evaluating suggestions for improving the property tax administration process, and promoting greater understanding of property tax administration issues. Members will be appointed by the Executive Director of the Department of Revenue and the task force will be directed to make periodic reports to the Department of findings and recommendations in the area of property tax administration.

**Section 9** provides that, except as otherwise provided, the act will take effect July 1, 2001.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The change in the list of agricultural purposes may result in additional property being taxed on its classified use instead of its fair market value..

B. Private Sector Impact:

This bill will allow tax collectors to continue to contract with private title companies and abstract companies to provide information related to the sale of property as a result of a tax deed.

C. Government Sector Impact:

This bill corrects many problems identified by the Auditor General with respect to the Department of Revenue's administration of property taxes. Changes made by this bill will improve the department's oversight of county tax rolls and address an inequity in the state's distribution of public school funding to the school districts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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