

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1006

INTRODUCER: Senator Fasano

SUBJECT: Ad Valorem Assessments/Challenges

DATE: March 10, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	FT	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises the burden of proof in a challenge to an assessment by providing that in going forward with an administrative or judicial action, the property appraiser bears the burden of proving that the assessment was arrived at under specified conditions. If the burden of proof is met, the property appraiser's assessment is presumed correct.

The bill revises the taxpayer burden of proof in cases where the appraiser is presumed correct by providing that the taxpayer must prove by a preponderance of the evidence, rather than clear and convincing evidence, that the assessment exceeds just value or was erroneously calculated. In an action where the property appraiser challenges a value adjustment board's determination of value, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the value adjustment board is less than just value.

The bill provides that the property appraiser's assessment does not have a presumption of correctness in administrative or judicial actions where a denial of an exemption or assessment classification is challenged. The taxpayer must prove entitlement to the exemption or classification by a preponderance of the evidence.

The bill expresses the Legislature's intent that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment, and reaffirms that the Legislature expressly rejected the "every-reasonable-hypothesis" standard in 1997 by creating a lower burden of proof. The Legislature's intent to

reject that any cases published since 1997 citing the “every-reasonable-hypothesis” as interpretive of legislative intent is established.¹

Finally, the bill expresses the Legislature’s intent that the provisions establishing the burden of proof and loss of presumption of correctness in actions challenging a denial of an exemption or assessment classification are to apply retroactively and are intended to clarify existing law, as are the provisions rejecting the “every-reasonable-hypothesis” standard.

This bill substantially amends s. 194.301, F.S., and creates two undesignated sections of law.

II. Present Situation:

Just Value— Section 4, Art. VII, State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.²

Section 193.011, F.S., provides the eight factors the property appraiser must use when arriving at just value:

- The present cash value of the property, which is what a willing buyer would pay a willing seller, exclusive of reasonable fees and costs of purchase, in an arm’s length transaction.³
- The highest and best use to which the property can be expected to be put in the immediate future (taking into consideration specified factors).
- The location of the property.
- The quantity or size of the property.
- The cost and the present replacement value of any improvements on the property.
- The condition of the property.
- The income from the property.
- The net proceeds of the sale of the property after deduction of reasonable fees and costs.

The method of valuation and the weight assigned to each of the eight factors is at the property appraiser’s discretion. The assessment will not be disturbed on review so long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.⁴

¹ Established in *Folsom v. Bank of Greenwood*, 97 Fla. 416, 120 So. 317, (Apr. 1929) where the Florida Supreme Court upheld the trial court’s invalidation of an assessment for the property appraiser’s failure to also assess similar property of other businesses but noted that “the prima facie correctness of an assessment when made by the proper officers must be affirmatively overcome by appropriate and sufficient allegations and proofs excluding every reasonable hypothesis of a legal assessment.”

² *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dad County*, 275 So.2d 4(Fla. 1973)

³ Transaction conducted by unrelated parties, each person acting in his or her own self-interest.

⁴ See *Blake v. Xerox Corp.*, 447 So.2d 1348, (Fla. 1984) reviewed on the jurisdictional ground of conflict of decisions, where the Florida Supreme Court held that issue at matter was not the method of determining market value, but the only question was “whether the appraiser considered all factors mandated by the law and whether his methods and conclusions are supported by any reasonable hypothesis of a legal assessment” and noted that the trial court “judgment should have been affirmed (by the DCA, 3rd District) simply on the ground that the property appraiser’s determination, having been lawfully arrived at and being supported by a reasonable hypothesis of correctness, was properly upheld.”

Presumption of Correctness— Section 194.301, F.S., provides that in any administrative or judicial action brought by a taxpayer, the property appraiser’s assessment is presumed correct. If the taxpayer can show by a preponderance of the evidence (burden of proof) that the property appraiser has failed to properly consider the criteria in s. 193.011, F.S., or that the property appraiser’s assessment is arbitrarily based on appraisal practices different than those generally applied to similar properties within the same class and county, the property appraiser’s presumption of correctness is lost.

If the presumption is lost, the taxpayer must then prove by a preponderance of the evidence (burden of proof) that the 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 assessment is not supported by any reasonable hypothesis of a legal assessment. If the property appraiser is determined to be in error, the Value Adjustment Board (VAB) or the court can establish the assessment if there exists competent, substantial evidence in the record which cumulatively meets the requirement factors for determining just value under s. 193.011, F.S. If the record lacks the appropriate evidence, the matter is remanded by the VAB or the court with appropriate directions to the property appraiser.

Preponderance of Evidence— Black’s Law Dictionary 1182 (6th ed. 1990) defines “preponderance of evidence” as a standard of proof in civil cases; preponderance of evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.⁵

Clear and Convincing Proof— Black’s Law Dictionary 251 (6th ed. 1990) defines “clear and convincing proof” as proof which results in reasonable certainty of the truth of the ultimate fact in controversy, proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.⁶

III. Effect of Proposed Changes:

Section 1. Amends s. 194.301, F.S., to create new provisions governing the presumption of correctness and burden of proof in challenges to ad valorem tax value assessments.

- In any administrative or judicial action in which a taxpayer challenges an ad valorem assessment of value, the property appraiser has the burden of proving that the assessment was arrived at by complying with s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate. If the property appraiser meets the burden of proof, the assessment is presumed correct.
- In any administrative or judicial action in which a taxpayer challenges an ad valorem assessment of value, the taxpayer has the burden of proving by a preponderance of the evidence that the assessment of value exceed just value, or that the assessment is based

⁵ Citing *Braud v. Kinchen*, LA. App. 310 So.2d 657, 659

⁶ Citing *Lepre v. Caputo*, 131 N.J. Super. 18, 328 A.2d 650, 652 and *In re: Estate of Lobe*, Minn. App., 348 N.W. 2d 413, 414

on appraisal practices different from those generally applied to comparable property within the same class.

- In any judicial action in which the property appraiser challenges the VAB's determination of value, the property appraiser has the burden of proving by a preponderance of the evidence that the assessment established by the VAB is less than just value.
 - If the property appraiser's assessment is determined to be in error, the VAB or the court can establish the assessment if competent, substantial evidence exists in the record which cumulatively meets the requirements of s. 193.011, F.S., and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
 - The burdens of proof being created apply only to the challenge of an assessment that is revised and after the revised assessment is remanded to the property appraiser by a VAB or court.

Section 2. Creates an undesignated section of law to express the Legislature's intent that:

- A taxpayer never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment,
- All cases establishing the "every-reasonable-hypothesis" standard in 1987 were expressly rejected by the Legislature when it adopted chapter 97-85, Laws of Florida,⁷ to create a lower burden of proof.
- Any cases published since 1997 citing the "every-reasonable-hypothesis" are expressly rejected to the extent that they are interpretive of legislative intent.

Section 3. Creates an undesignated section of law to express the Legislature's intent that the provisions establishing the burden of proof and loss of presumption of correctness in actions challenging a denial of an exemption or assessment classification are to apply retroactively and are intended to clarify existing law, as are the provisions rejecting the "every-reasonable-hypothesis" standard.

Section 4. Provides that the act shall take effect upon becoming a law and first apply to assessments in 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

⁷ Enacted by the 1997 Legislature to create s. 194.301, F.S., Presumption of Correctness.

Because this bill does not qualify for one of the exceptions or exemptions provided in s. 18, Art. VII, State Constitution, and it is possible that taxpayers could more successfully challenge assessments, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that taxpayers are more successful in challenging assessments, and denial of exemptions and use classifications, taxpayers will pay lower ad valorem taxes.

B. Private Sector Impact:

Taxpayers will have a lower burden of proof in challenging assessments and denial of exemptions and use classifications.

C. Government Sector Impact:

Local Government

The bill provides that the burden of proof is placed on the property appraiser in going forward with a taxpayer challenge to an assessment. The property appraiser must prove that the assessment or the denial of an exemption or classification complies with the law and with appraisal practices.

The fiscal impact to local governments from the retroactive application of certain provisions in the bill is indeterminate at this time.⁸

This bill is scheduled for hearing by the Revenue Estimating Conference at a future date but a similar bill (HJR 7005) was reviewed during the 2008 Regular Session. The conference adopted an indeterminate negative estimate because the HJR would require voter approval. However, the impact of lower assessments on local government tax

⁸ See *State Farm v Laforet*, 658 So.2d 55 (Apr. 1995) where the Supreme Court held that a specified section of statute could only be applied prospectively but noted that “the general rule is that substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but that a procedural or remedial statute is to operate retrospectively (citing *Arrow Air, Inc. v. Walsh*, 645 So.2d 422 (Fla. 1994)). Even when the Legislature does expressly state that a statute is to have retroactive application, this Court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties (citing *Alamo Rent-a-Car, Inc. v Mancusi*, 632 So.2d 1352 (Fla. 1994).”

revenues was estimated at \$360.5 million in FY 2009-2010, increasing to at least \$1.75 billion by FY 2013-2014.

State Government

In the agency bill analysis, the Department of Revenue noted that the bill would have an operational impact on the department's studies and in-depth reviews because s. 195.096(2)(d), F.S., provides that "in the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere." Considerable additional resources would be required for the department to comply with the Uniform Standards of Professional Appraisal Practice in conducting in-depth reviews.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 475.612(6), F.S., provides that property appraisers, as government employees, are exempt from compliance with the Uniform Standards of Professional Appraisal Practice. In AGO 96-31, the Attorney General noted that the exemption in s. 475.612(6), F.S., is not subject to the requirements of Part II, Chapter 475, F.S., even if the employee includes his or her registration designation and number on the appraisal. The bill provides that the property appraiser has the burden of proving that the assessment of a parcel was arrived at, in part, by using professionally accepted appraisal practices.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.