

# Research Report



May 1996

## Property Tax Burden of Proof Reform Adds Fairness and Accountability

---

One of the most hotly debated issues before the 1996 Florida Legislature was a proposal to change the burden of proof required for a taxpayer to successfully challenge a property appraiser's ad valorem (property tax) assessment. Legislation (House Bill 557 and Senate Bill 740) was introduced that provided in both judicial and administrative actions, when challenging an assessment or a denial of an exemption or classified status, a taxpayer could overcome the property appraiser's presumption of correctness by presenting a "preponderance of the evidence." No longer would the taxpayer have to present proof which excludes every reasonable hypothesis of a legal assessment. This legislation was co-sponsored by 131 of 160 legislators.

The legislation received considerable debate in various committees. Voluminous public testimony was heard - much of it contradictory - by proponents and opponents. Florida TaxWatch released two *Ideas in Action* publications, giving each side a forum to voice their positions. These positions can be summarized as follows: Proponents (the business community) - the current requirement is perhaps the strictest in the country, making it nearly impossible for a taxpayer to successfully challenge an assessment. The new law would even the playing field, treating ad valorem taxpayers the same way as taxpayers challenging other taxes in Florida or property taxes in other states. Opponents (property appraisers and local governments) - The current law works well, the new law would virtually remove the presumption of correctness and only benefit large corporations who could afford to overwhelm property appraisers in court by bringing in hired experts to present their appraisals. The end result would be an increase in litigation and a reduction in the funds available for schools and local governments.

The legislation was eventually amended to limit the applicability of the new law to the 1996, 1997 and 1998 tax rolls. It also required the Office of Programs, Policy and Governmental Accountability (OPPAGA) to study the current procedures for challenging ad valorem assessments and recommend any changes it deemed necessary. This amended bill (HB 557) was passed by the Legislature and presented to the Governor on May 17, 1996. The Governor has stated that a veto of the bill is a possibility.

Florida TaxWatch has followed the debate on the burden of proof legislation closely. It has concluded that the current law presents an unreasonable obstacle for ad valorem taxpayers to overcome. Taxpayers can be granted some sort of relief at various stages of the assessment challenge process, but if the property appraiser chooses to fight it all the

way to court, taxpayer victories are rare. Further, the entire assessment challenge procedure needs to be examined. And while there is legitimate disagreement over what the actual impact of the new burden of proof would be, it would result in a situation that is fairer to all taxpayers. **Therefore, Florida TaxWatch recommends that the Governor sign House Bill 557 into law.** The sunset provision in the law would provide a chance to acquire the data needed to assess the impact of the change and in conjunction with the OPPAGA study, provide the framework for comprehensive change to achieve the fairest process possible.

### ***Is the Current Standard Fair?***

Taxpayers are ensured just valuation of property by the Florida Constitution. This should be the aim of any assessment challenge process. If a taxpayer can show that his or her appraisal is a better representation of the value of the property than that of a property appraiser, the taxpayer's assessment should prevail.

A Florida property appraiser is presumed to be correct if he has "considered" the eight criteria in Florida law. The extent or quality of that consideration is not addressed. The presumption can only be overcome if the taxpayer can prove that "the appraisal made was not supported by any reasonable hypothesis of legality." In effect, this means the focus of an assessment challenge is not on the value of the property, but on the hypothesis behind the assessment. In fact, a Florida appeals court has ruled that an assessment "cannot be overturned by a showing that a lower valuation is more reasonable."

Florida's standard is certainly one of the highest, if not the highest, in the nation. No state requires proof that there is no reasonable hypothesis which supports the property appraiser's assessment. Only Connecticut and Virginia come close to Florida's high burden of proof. Thirty states require a preponderance of the evidence or similar standard. Twelve states require a standard of "clear and convincing" or "substantial" evidence. While other factors must be considered when comparing states -- such as less than annual assessments -- it is clear that Florida's high burden on the taxpayer is exceptional.

### ***Who Will Benefit?***

Opponents of the bill have argued that this would only benefit large companies who can afford to hire experts and appraisers and would not benefit homeowners or even small businesses. Clearly, companies with the resources to challenge assessments in court would benefit -- that benefit being a chance to prove their case in court. However, HB 557 applies the new burden of proof to both judicial and administrative actions. Many homeowners and small businesses use the Value Adjustment Board (VAB) process to challenge assessments. A fairer burden of proof in this venue will help all taxpayers. Reducing the obstacle that taxpayers must overcome in court -- and thereby the legal fees required -- should also make court challenges more realistic for smaller taxpayers. In addition to larger business concerns, the National Federation of Independent Businesses,

the Florida United Business Association and several homeowners groups supported the bill.

### ***The Fiscal Impact***

Perhaps the most mentioned concern about the bill -- and certainly the one that affected legislators the most -- was the revenue impact this might have on schools and local governments. It is extremely difficult to estimate what the fiscal impact might be. But since decisions on assessment challenges are mostly made after millage rates are set, if more taxpayers prevail when challenging assessments, tax dollars will be lost. Although this is important to people who must budget property tax dollars to provide public services, it must be remembered that any fiscal impact would be tax dollars that a court or VAB has ruled the local government was not entitled to. If you have a fair system, any revenue lost would be overtaxation. Therefore, any potential revenue loss is largely irrelevant to the issue of whether this is the right thing to do. Instead, the focus should be whether or not it is fairer to taxpayers.

There are some potential impacts that the three year sunset and the OPPAGA study can help assess. These include what effect a court-lowered assessment on a specific property would have on other similar properties in a mass-appraisal approach, the potential that increased legal costs would lead property appraisers (particularly in small counties) to reduce values to avoid litigation even in situations where they believe they have a strong case. These should be addressed, but they are not justification for any taxpayer being assessed at higher than just value.

### ***Conclusion***

With the Save Our Homes Amendment artificially holding property values down on over one-third of the taxable value in Florida, the business community is understandably concerned about what effect this will have on its ad valorem taxes. This is not to imply that property appraisers would purposely over-assess non-homestead property to make up for value lost to Save Our Homes. However, the artificial loss of taxable value will put upward pressure on millage rates, making just assessments more and more important.

The legislation as passed is a proper compromise position between the two sides of this issue. The new law would be fairer to Florida ad valorem taxpayers by setting a more reasonable standard that applies to most other taxpayers in the country. The sunset provision requires the Legislature to revisit the issue. The required study can be helpful at looking at the entire picture, examining issues such as the make-up of value adjustment boards (independent special masters vs. public officials).

---

This report was researched and written by Kurt Wenner, Senior Research Analyst, under the direction of Dr. Neil S. Crispo, Senior Vice President, Research and Operations.

Catherine M. Haagenon, Communications Director; Gable Abblett, Publications  
Assistant

David McIntosh, Chairman; Dominic M. Calabro, President and Publisher

© **Copyright Florida TaxWatch, May 1996**

---