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 Committee on Regulated Industries

BILL:	SB 886
INTRODUCER:	Senator Gruters
SUBJECT:	Valuation of Timeshare Units
DATE:	January 12, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 886 provides that, upon an appeal of a property appraiser's valuation of timeshare units that are part of a timeshare development with more than 300 timeshare units, the number of resales is deemed to be adequate if the taxpayer provides a reasonable number of resales as supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice.

Current law requires a property appraiser to first look to the resale market to make a valuation of timeshare units. If there is an inadequate number of unit resales for arriving at the valuation, the property appraiser must use the original purchase price of the timeshare and deduct "usual and reasonable fees and costs of the sale."

The bill provides that this method meets the requirement of just valuation of all property, including timeshare units, as required under s. 4, Art. VII of the State Constitution. Additionally, under the bill, the taxpayer may submit the known and controlling resales of the properties sold to assist in arriving as value conclusions.

The Revenue Estimating Conference (REC) determined that the bill will reduce local government revenue by at least $171.5 million beginning in Fiscal Year 2024-2025. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.[1] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.[2] Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.[3] Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[4]

A "timeshare estate" is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.[5] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

The "managing entity" for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.[6]

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation of fee timeshare real property.[7] The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.[8]

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[1] *See* s. 721.05(36), F.S.
[2] Section 721.02(2) and (3), F.S.
[3] Section 721.03, F.S.
[4] *See* ss. 721.05(41) and 718.103(26), F.S.
[5] Section 721.05(34), F.S.
[6] *See* s. 721.02(22), F.S., defining the term "managing entity."
[7] Section 192.001(14), F.S., defines the term "fee timeshare real property" to mean "the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property."
[8] Section 192.037(1), F.S. Section 192.001(15), F.S., defines the term "timeshare period titleholder" to mean "the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S, relating to timeshares and vacation plans.

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal an ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.[9]

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.[10]

A property appraiser must first look to the resale market for determining the value of timeshare property.[11] If the property appraiser finds an inadequate number of resales exists for such a determination, the property appraiser must determine the value by deducting the "usual and reasonable fees and costs of the sale" from the original purchase price.[12]

The term "usual and reasonable fees and costs of the sale" for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.[13] For timeshare real property, the "usual and reasonable fees and costs of the sale" is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.[14]

Section 4, Art. VII of the State Constitution requires regulations for securing a just valuation of all property to be prescribed by general law subject to the conditions in this section, including providing that no assessment may exceed just value.

III. Effect of Proposed Changes:

The bill amends s. 192.037, F.S., to require the property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate if, on appeal of the tax assessment for a timeshare unit that is part of a timeshare development with more than 300 timeshare units, the taxpayer asserts that there is an adequate number of resales to provide a basis for arriving at a value and provides a reasonable number of resales as would be supported by the Uniform Standards of Professional Appraisal Practice.[15]

The bill provides that this method meets the requirement of just valuation of all property, including timeshare units, as required under s. 4, Art. VII of the State Constitution. Additionally,

[9] Section 192.037(4), F.S.
[10] Section 192.037(5), F.S.
[11] Section 192.037(10), F.S.
[12] Section 192.037(11), F.S.
[13] *Id.*
[14] *Id.*
[15] The Uniform Standards of Professional Appraisal Practice provides ethical and performance standards for the appraisal profession in the United States. See The Appraisal Foundation, What is UPAP?, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx (last visited Jan. 10, 2024).

under the bill, the taxpayer may submit the known and controlling resales of the properties sold to assist in arriving at value conclusions.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Article VII, of the State Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote 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 cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact.[16]

The Revenue Estimating Conference (REC) determined that the bill will reduce local government revenue by at least $171.5 million beginning in Fiscal Year 2024-2025.[17] Therefore, this bill may be a mandate subject to the requirements of s. 18(b), Art. VII, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None.

[16] FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at*: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 9, 2024).

[17] Based on the Demographic Estimating Conference's revenue estimating conference for HB 471 adopted on Dec. 1, 2023. The conference packet is available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/impact1201.pdf (last visited Jan. 9, 2023).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce local government revenue by at least $171.5 million beginning in Fiscal Year 2024-2025. The REC noted that the fiscal impact may likely be greater because the Uniform Standards of Professional Appraisal Practice appears to provide minimal guidance regarding the adequate number of timeshare property resales.[18]

B. Private Sector Impact:

Persons having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Two appeals of a property appraiser's valuation of timeshare properties highlight that the timeshare resale market may not be sufficiently robust to use as the basis of an appraisal for ad valorem valuation.[19]

The appeals involved four timeshare developments. For each development, the property appraiser determined that the resale market for the timeshare developments was insufficient to produce an adequate number of resales for valuation purposes. Consequently, the property appraiser deducted from the original purchase price the usual and reasonable fees and costs of the sale. The property appraiser prevailed in both appeals. There may be additional, related appeals pending that challenge to the property appraiser's valuation of time share properties.[20]

The resale valuation and the original purchase price valuation may produce significantly different results. In these court cases, the resale price valuation method resulted in values that were between 75 percent and 40 percent lower than the purchase price method.[21]

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[18] *Id* at 32.
[19] *See Cypress Palms Condominium Association, Inc. v. Scarborough*, Final Judgment, case no. 2012-CA-1293-OC (Fla. 9th Jud. Cir. 2016) (on file with the Senate Committee on Regulated Industries); and *Star Island Vacation Ownership Association, Inc. v. Scarborough*, Final Judgment, case no. 2016-CA-1006-OC (Fla. 9th Jud. Cir. 2019), *aff'd per curiam* 2021 WL 646806 (Fla. 5th DCA) (on file with the Senate Committee on Regulated Industries).
[20] *See Star Island Vacation Ownership Association, Inc.*, n. 1.
[21] *Supra* n. 19.

The Department of Revenue's bill analysis indicated that the provision in the bill that the methodology in provided in the bill meets the requirement of just valuation under s. 4, Art. VII of the State Constitution could create "very significant difficulties in [tax] administration because it appears to reverse and/or potentially contradict the just value requirements outlined in s. 194.301 F.S."[22]

VIII. Statutes Affected:

This bill substantially amends section 192.037 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

[22] Department of Revenue, *2024 Agency Legislative Bill Analysis of HB 471 [SB 886]*, dated July 1, 2024 (on file with the Senate Regulated Industries Committee).