

MEMORANDUM

January 6, 2010

TO: The Honorable Chair and Members of The School Board of Miami-Dade County, Florida

FROM: Alberto M. Carvalho, Superintendent of Schools *AMC*

SUBJECT: OFFICE OF PROGRAM POLICY AND GOVERNMENT ACCOUNTABILITY (OPPAGA) REPORT: TIME AND COSTS ARE INCREASING FOR COUNTIES TO COMPLETE THE VALUE ADJUSTMENT BOARD PROCESS

As you may recall, the Value Adjustment Board (VAB) process in some counties is staggering across multiple fiscal years due to a growing number of petitions, recent changes in state law and administrative rules, and the emerging industry of property tax representatives. In fact, Miami-Dade's VAB is currently 2 years in arrears, thus affecting school district and municipal government cash flow. As a result, pursuant to Board directive, its legislative platform has included some sort of remedy for the current situation. During the 2010 legislative session, efforts in the passage of legislation resulted in a study on the current situation by OPPAGA. Such a report was issued yesterday and is attached for your information. The report provides several recommendations which include the:

- Establishment of a date by which counties must complete the VAB process for each year;
- Establishment of a cap in the number of reschedules of appointments;
- Elimination of the 25-day notice when a hearing is rescheduled;
- Modification of the filing fee structure;
- Acceptance of partial certification of the tax rolls;
- Requirement of property owners to pay a portion of their taxes when filing a petition; and
- Increasing the accountability of the board process.

Pursuant to the Board's legislative platform for the upcoming session, preliminary discussions with members of the Delegation have begun on this issue with some interest in the filing of legislation on our behalf. These recommendations will be used in the development of statutory changes.

If you have any questions, please contact Ms. Iraida R. Mendez-Cartaya, Assistant Superintendent, Office of Intergovernmental Affairs, Grants Administration, and Community Engagement, at 305-995-1497.

AMC:ldb
M596

Attachment

cc: School Board Attorney
Superintendent's Cabinet



December 2010

Report No. 10-64

Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process

at a glance

Florida property owners who disagree with their property's assessment can appeal to their county's value adjustment board. The time county boards take to complete the process varies, but has increased in recent years due to factors such as growing numbers of petitions, recent changes in state law and administrative rules, and involvement of property tax representatives. In addition, counties reported an increase in board costs. Other participants in the process, including property owners, county property appraisers, and school districts, also incur costs.

The value adjustment board process continues to undergo significant changes due to recent administrative rule changes. The overall effects of these changes, including those related to the length of the process, may not be evident for some time. However, if the Legislature wishes to make additional changes to the value adjustment board process, it could consider options to (1) shorten the process; (2) address costs and other fiscal implications; and (3) increase accountability.

Scope

As directed by the Legislature, OPPAGA reviewed the value adjustment board process and answered four questions.

1. What is the role of value adjustment boards?
2. What factors affect the length of the value adjustment board process?

3. What costs are associated with the value adjustment board process?
4. What options could the Legislature consider to modify the value adjustment board process?

Background

The Florida Constitution reserves ad valorem taxation (i.e., property taxes) for local governments and it is their largest source of funding.¹ More than 640 local governments in Florida, including cities, counties, school boards, and special districts, levy property taxes.

Florida's property tax system is guided by state law but implemented at the local level. There are several steps to the ad valorem tax process. In the first step, county property appraisers establish each property's just, or market, value as of January 1 of each year and apply any valid exemptions, classifications, or assessment limitations to determine the parcel's taxable value.

Local taxing authorities, with the exception of district school boards, set a millage rate (i.e., tax rate) that is levied on the property's taxable value.^{2,3} For district school boards, the Legislature establishes, via the General Appropriations Act and implementing legislation, the amount of revenue that must be

¹ State government derives no revenue from property taxes.

² Under s. 1011.71, *F.S.*, district school boards adopt a millage rate not to exceed the amount certified by the education commissioner as the minimum millage rate necessary to provide the district required local effort for the current year.

³ The millage rate multiplied by the taxable value is the amount of the tax levied on each property.

raised for property taxes in order for school districts to receive state funds through the Florida Education Finance Program (FEFP) funding formula.⁴ No later than July 19 of each year, the Commissioner of Education certifies each district's required local effort millage rate after the Department of Revenue certifies the property tax valuations of each district. Millage rates are also adjusted because required local effort may not exceed 90% of a district's total FEFP entitlement.

Each August, county property appraisers send property owners a Notice of Proposed Property Taxes, which identifies the just, assessed, and taxable value of the parcel and the tax that will be due based on the millage rates proposed by local governments. Property owners who disagree with their property's assessment can appeal to the county value adjustment board. Property taxes are due November 1 or as soon thereafter as the certified tax roll is received by the tax collector. Pending any appeals, unpaid taxes are delinquent after March 31 of the following year.

The Department of Revenue is responsible for ensuring the overall accuracy of county property appraiser assessments although the department does not review every assessment.⁵ The department's Division of Property Tax Oversight develops rules and regulations for property tax administration; these rules address the activities of county property appraisers, tax collectors, clerks of the circuit court, and the value adjustment boards.

To help ensure that the value adjustment board process is fair, the department provides training for the persons involved in the process and develops uniform rules governing property tax appeals. However, the department has no enforcement authority over the boards. Accountability for the process rests

with county officials, and participants who have complaints about the process have three local mechanisms for seeking redress. First, petitioners can take concerns (e.g., hearing reschedules) to board staff. Second, petitioners are required by department rule to submit specific complaints about the process (e.g., qualifications or conduct of a special magistrate) to the value adjustment board attorney, who is responsible for addressing them and providing the department a copy of the complaint and the response. Third, petitioners can bring their complaints to any of the three elected officials that serve as board members.

Other states use different approaches for levying property taxes and providing taxpayer relief. The property assessment and appeal process varies greatly across the nation. States differ in how property appraisers are selected and what levels of government are involved in the appeals process. Florida voters elect property appraisers who assess all property values in their county. In contrast, property appraisers are appointed officials in many states. For example, in Georgia, county commissioners appoint an independent Board of Assessors that determines property values for tax purposes. The Board of Assessors appoints a chief appraiser who manages day-to-day assessment activities. If a property owner wants to appeal a property assessment, the appeal goes before a Board of Equalization appointed by the county grand jury.

In other states, these tasks are conducted by state agencies or by local governments. For example, in Maryland, the State Department of Assessments and Taxation determines the taxable value of all real and personal property, and property owners appeal assessments to the state agency. While Florida conducts a state assessment of railroads, in Colorado the state assesses utilities, airlines, telecommunications, pipelines, as well as railroads, because these properties cross county boundaries and are not separately operating business units or enterprises; local governments assesses other property. Colorado property owners can appeal all assessments to local property tax administrators. Connecticut follows yet another model, as its cities and towns

⁴ The 1973 Legislature created the Florida Education Finance Program (FEFP) and established the state policy to provide equalization of educational opportunity. The FEFP formula recognizes: (1) varying local property tax bases; (2) varying education program costs; (3) varying costs of living; and (4) varying costs for equivalent educational programs due to sparsity and dispersion of the student population.

⁵ The Florida Auditor General periodically reviews the department's work in this area.

administer property taxes and property owners may file appeals to their local Board of Assessment Appeals.

Questions and Answers—

What is the role of value adjustment boards?

Value adjustment boards offer property owners a way to challenge assessed property values. State law and administrative rules guide this process by specifying board organization and procedures, with local government having direct oversight responsibility. While stakeholders agree that the boards are important for protecting property owners and holding property appraisers accountable, some have reported concerns about the process.

Florida property owners may appeal property assessments. Property owners who disagree with the county property appraiser assessment of their property's market value or who have been denied an exemption or property classification have the right to file an appeal (i.e., petition) with their county value adjustment board. Instead of, or subsequent to, a value adjustment board petition, property owners can contest an assessment in circuit court in the county where the property is located. Circuit courts are local trial courts that have jurisdiction for all matters relating to property taxation.⁶ In addition, at any time before or during their appeal, property owners may request an informal meeting with the property appraiser. Changes made by the property appraiser as a result of such meetings are known as 'counter changes'.⁷ If the appraiser agrees to revise the assessment or persuades the owner of its validity, the owner can withdraw the petition. If the two parties do not reach an agreement, the owner can continue the value adjustment board appeal or pursue legal remedies. Property owners can

⁶ Section 194.171, *F.S.*, also provides that property owners may appeal a value adjustment board decision to the circuit court. Under the statute, before a court action to contest an assessment may be brought, the taxpayer must pay the county tax collector not less than the amount of the tax that the taxpayer admits in good faith is owed.

⁷ Section 194.011(2), *F.S.*

pay property taxes in advance of the hearing or may wait until the hearing process is complete.⁸

Counties may charge a fee for value adjustment board appeals. Under state law, counties can charge property owners a filing fee of up to \$15 for an appeal through the value adjustment board process. However, this fee is \$5 per parcel in cases where a petition includes multiple parcels with similar characteristics.⁹ For example, a condominium association filing an appeal representing 200 units (parcels) in a building would pay a filing fee of \$1,010 (\$15 for the first parcel and \$5 each for the remaining 199 parcels), and a developer challenging the assessment for 300 parcels of contiguous and similar land in a subdivision would pay \$1,510.

State law and department rules prescribe the value adjustment board process. State law requires that each county value adjustment board have five members, including two elected county officials (i.e., county commissioners), one local school board member, and two citizens.¹⁰ In addition, statute requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings.^{11, 12} These special magistrates must be state certified real estate appraisers with at least five years of applicable experience.¹³ Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other

⁸ Section 197.323(2), *F.S.*, specifies that a tax certificate or warrant shall not be issued under s. 197.413 or s. 197.432, *F.S.*, with respect to delinquent taxes on real or personal property for the current year if a petition currently filed with respect to such property has not received final action by the value adjustment board.

⁹ A parcel is a tract or plot of land, including a condominium unit.

¹⁰ Section 194.015, *F.S.*

¹¹ For the most recent census (2000), 32 counties fell below the population threshold to require special magistrates. However, counties below 75,000 in population may use special magistrates if they choose.

¹² Section 194.035, *F.S.*

¹³ Special magistrates who hear exemption and classification petitions must be members of the Florida Bar with at least five years of applicable experience.

administrative functions.¹⁴ Typically, county clerks or their employees provide board administrative support, which includes collecting filing fees, scheduling hearings, and maintaining related records.

To schedule a hearing, the clerk must notify the petitioner of the hearing date at least 25 days in advance. Prior to the hearing, the property appraiser and petitioner may exchange evidence. At the hearing, a representative from the property appraiser's office defends the property assessment, and the petitioner or his or her representative may present evidence disputing the assessment and request a change.¹⁵ Depending on the county, the board or the special magistrate hears the arguments, considers evidence, and makes a decision. Some decisions uphold the appraiser's valuation, while others may support the property owner's assertions and result in a modified assessment.

If the property owner has already paid their tax bill and receives a reduced assessment, then the tax collector refunds the difference between the original payment and the final tax bill. In the absence of a tax reduction, the property owner must pay the assessed tax and is charged interest if the hearing concludes after March 31. A petitioner whose appeal results in any reduction in the assessment after March 31 may submit any unpaid taxes within 30 days and obtains the 4% early payment discount. In counties where value adjustment board hearings continue for months beyond the March 31 deadline, some property owners may realize a financial benefit by not paying taxes until after the board has completed all hearings. Thus, the length of the board process may allow property owners to delay property tax payments for months or even years.

Once the board or magistrates have concluded all hearings for a particular tax cycle, the board approves its final decisions and the appraiser

certifies the county's final property tax roll.¹⁶ Petitioners have 60 days from a final board decision to file an appeal in circuit court.

Some stakeholders reported concerns about the value adjustment board process. While value adjustment boards provide taxpayers an opportunity to contest property assessments outside of the courts systems, some stakeholders expressed concerns about the system. For example, some appraisers noted that property owners often use the process to dispute the millage rate established by local governments as well as their property assessment; appraisers can only address the property's assessment, as other entities (e.g., county commissions and school boards) establish the millage rate used to determine taxes.

In addition, property owners have expressed concerns about the independence and professionalism of value adjustment board participants. In 2010, the Department of Revenue surveyed a statewide sample of 1,056 value adjustment board petitioners, with a 13.4% response rate. The department reported that 11% of the respondents criticized the special magistrates and asserted that hearings were not conducted in a professional or businesslike manner. Moreover, 42% of respondents expressed concern that their hearings had been biased and unfair. Some respondents also noted concerns about existing relationships between the boards, magistrates, and property appraiser's office, commenting that magistrates appeared to 'rubber stamp' the property appraiser's findings. Others suggested that to eliminate the appearance of bias, magistrates should not be hired by counties or have pre-existing relationships with county government officials.

Survey respondents also reported a lack of understanding about the board process, not knowing what type of evidence is required, and not understanding why the process takes so long. Department of Revenue officials indicated that they are preparing a brochure to provide petitioners more in-depth information

¹⁴ Rule 12D-9.013, *F.A.C.*

¹⁵ Property appraisers rely on a mass appraisal process using computer models but are called to defend the value of individual parcels. As a result, property appraisers report that preparing for hearings can create significant workload issues, especially for complex commercial cases.

¹⁶ Section 194.037, *F.S.*, requires clerks to make public notice of board findings and results and publish the tax impact of value adjustment board proceedings.

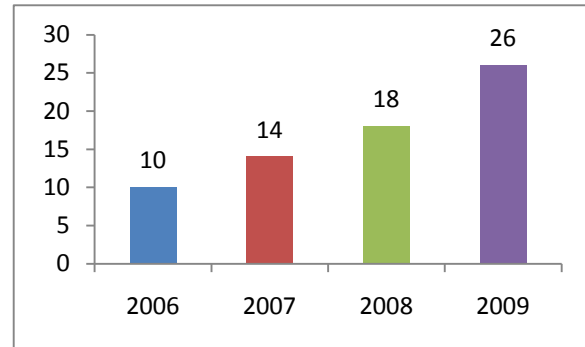
about the process. Officials also noted that magistrate training materials provided on the department’s website are available to the public and address some of these issues.

What factors affect the length of the value adjustment board process?

The number of petitions filed with value adjustment boards has significantly increased in recent years, which has lengthened the board process, as have recent changes in state law and rules and the involvement of property tax representatives in appeals. The process typically takes a few months to complete in smaller counties, but can take one to two years in larger counties. A lengthy hearing process can create problems for taxpayers who may be waiting for tax refunds and local governments that cannot finalize revenues until the hearings are completed. Counties with high volumes of petitions have taken steps to address concerns about the duration of the process.

The length of the value adjustment board process has increased in some counties. While the time to complete the value adjustment board process varies across the state, the appeals process has delayed certification of tax rolls in an increasing number of counties. In recent years, more counties have been unable to certify their tax rolls by April 1 of the following year, when property taxes are due.¹⁷ For the 2006 tax cycle, 10 counties completed the value adjustment board process and certified their tax rolls after April 1. In contrast, for the 2009 tax cycle, 26 counties did not complete the process by April 1 (see Exhibit 1).¹⁸ Some counties have lagged a year or more behind in completing the appeals process. For example, Duval and Miami-Dade counties did not complete value adjustment board hearings for the 2008 tax year until 2010.

**Exhibit 1
The Number of Counties Certifying Value Adjustment Board Completion After April 1 Has Increased**



Source: OPPAGA analysis of Department of Revenue data.

In addition, delays can affect local government budgets, as counties, school districts, and other entities may be unable to finalize revenues until hearings are completed and tax rolls are certified. For example, as of May 2010, value adjustment boards in Broward, Duval, and Miami-Dade counties were at least one year behind in completing their hearings, which can result in cash flow problems for school districts. Florida school districts are funded by a cost sharing formula based on legislative appropriations plus a portion of local property taxes. Counties, schools, and other entities base their budgets for the coming year on an estimate of expected property tax revenues. However, counties and school districts may not receive all anticipated revenues for a variety of reasons, including property assessment reductions from value adjustment boards.

Delays in completing the value adjustment board process can also create cash flow problems for school districts. Districts establish their annual budgets based on anticipated revenues, generated in part by levying the required level of property taxes (required local effort) established by the Legislature. However, the amount of property tax revenues collected by districts can be less than anticipated for various reasons including value adjustment board decisions that lower assessed property values. To adjust for these differences and maintain equal education funding throughout the state, districts are required to recover local revenues not received

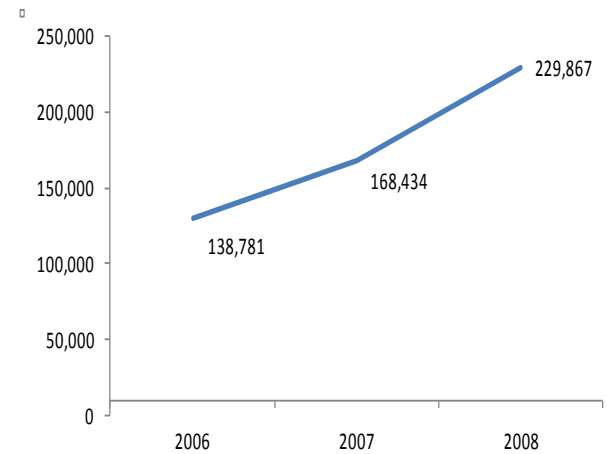
¹⁷ While there is no statutory deadline for counties to complete the value adjustment board process, property taxes are due in November and, if not paid, are delinquent after March 31.

¹⁸ Officials in other counties noted that while their value adjustment board processes were completed by April 1, the process took longer to complete than in prior years and delayed tax roll certification.

in previous years by levying a prior period funding adjustment millage rate. This adjustment generates the amount of funds not received in the prior year that are added to funding in the subsequent year. The Department of Education establishes this millage rate based on property tax values provided by the Department of Revenue, which requires property appraisers to submit completed tax rolls for prior years by July 1. However, if a county has not completed its board hearings for a prior year’s valuations and the appraiser has not submitted the final tax roll to the Department of Revenue, the school district cannot levy the prior period funding adjustment millage. As a result, the district experiences an additional year’s delay of cash to support its operating budget.

The number of appeals has substantially increased, lengthening the process. Department of Revenue records show that the number of property owners filing petitions with value adjustment boards to appeal their property assessments increased substantially in recent years. In 2006, property owners filed petitions concerning 138,781 parcels; this grew to petitions involving 229,867 parcels in 2008, an increase of 66% (see Exhibit 2).^{19, 20} Property appraiser offices track the number of parcels involved in appeals rather than petitions and must defend the assessment for each parcel when multiple parcels are included in a single petition.²¹ Appendix A provides the number of parcels included in board appeals for each county between 2006 and 2008.

**Exhibit 2
The Number of Parcels with Appealed Values Has Increased**



Source: OPPAGA analysis of Department of Revenue data.

Counties reported that the time to complete the process has increased due in part to the increase in petitions. For example, for the 2006 tax cycle, Lee County completed the process in March 2007; however, the county did not complete the 2009 tax cycle until May 2010. Similarly, Duval County completed the 2006 tax cycle in mid-September 2007, but did not complete the 2008 tax cycle until October 2010.

The increase in petitions is likely due to both national and state factors. Specifically, the rapid rise in property values during the real estate boom substantially increased assessments and property taxes for many property owners, resulting in growing concerns with property taxes. The collapse of the real estate boom beginning in 2008 has also fueled concerns that properties are overvalued for tax purposes. In addition, state law changes have reduced property owners’ burden of proof when challenging property assessments and provided for Save Our Homes portability.²²

Recent statutory and rule changes may have lengthened the value adjustment board process. The 2009 Legislature revised state law concerning property appraisers and eliminated the ‘presumption of correctness’ in

¹⁹ Figures for the 2008 tax cycle represent the most recent year for which most counties have certified county tax rolls signaling the completion of the value adjustment board process. County information for the 2008 tax cycle would not show the effect of new 2010 rules adopted by the Department of Revenue.

²⁰ These data are incomplete as Department of Revenue totals for parcels do not include all 67 counties.

²¹ The Department of Revenue collects statewide property assessment data from county property appraisers and reports this data in parcels, which is the primary unit of measurement for appraisers.

²² Save Our Homes portability can result in an assessment appeal if the homeowner feels the home s/he is selling is undervalued, which reduces the Save Our Homes portability benefit.

proceedings involving the appraiser’s office, making it easier for property owners to challenge appraisals.²³ In the past, Florida Statutes placed the burden on the property owner to prove that the property appraiser’s assessment was incorrect. If the property owner presented no evidence, the magistrate or board would rule in the appraiser’s favor. With the elimination of the presumption of correctness, the value adjustment board or special magistrate may now require the property appraiser to present evidence defending their assessment, which can lengthen the hearing process.

In addition, recent administrative rule changes modified the approach counties use to schedule hearings. Final rules implemented in 2010 allow petitioners to reschedule a board hearing once for ‘no cause’ and establish criteria for boards to reschedule hearings under certain ‘good cause’ conditions.²⁴ These rules do not limit the number of times petitioners may request a reschedule for good cause, and counties reported that some petitioners reschedule hearings multiple times. The rules also require boards to notify petitioners 25 days prior to each hearing. Collectively, these changes can extend the process, particularly when petitioners reschedule hearings multiple times.

As shown in Exhibit 3, some counties reported large numbers of rescheduled hearings.²⁵ Seven of the counties that certified tax rolls after April 1 for the 2008 tax cycle reported rescheduling hearings, with Miami-Dade County reporting 22,000 reschedules.

**Exhibit 3
Counties Reported Rescheduling Many Value Adjustment Board Hearings for the 2008 Tax Year**

County	Number of Petitions for Which Hearings Were Rescheduled
Miami-Dade	22,000
Broward	6,477
Palm Beach	2,969
Hillsborough	1,736
Charlotte	264
Nassau	225
Bay	134

Source: OPPAGA analysis.

Property tax professional involvement may lengthen the value adjustment board process. Some property owners hire property tax professionals to assist with their appeals of property assessments. These representatives provide expertise in property tax appeals and file petitions, prepare evidence, and attend value adjustment board hearings on the property owner’s behalf. They typically work on a contingency basis and may actively solicit appeals from homeowners, commercial property owners, and groups such as condominium associations.

Some counties reported that the involvement of property tax professionals can lengthen the value adjustment board process. According to county officials, these professionals may represent a large number of clients in multiple counties; consequently, scheduling and travel difficulties can result in the need to reschedule hearings. Also, the commercial and condominium cases they frequently represent can be complex, requiring lengthy hearings to present and consider evidence supporting and challenging property assessments. The proportion of commercial property petitions varies considerably by county. For example, in Palm Beach County, 20% of petitions concern commercial properties, while in Duval County, 49% of petitions are for commercial properties.

Counties with high petition volume use several strategies to manage value adjustment board workload. Some counties that handle large numbers of property tax appeals have implemented strategies to manage this workload and case timelines.

²³ In addition to changes concerning the presumption of correctness, the 2009 Legislature made significant changes to the information contained in the Notice of Proposed Property Taxes.

²⁴ Reasons for ‘good cause’ that a board clerk or board designee may consider in providing for a rescheduling are: (1) petitioner is scheduled for a value adjustment board hearing for the same time in another jurisdiction; (2) illness of the petitioner or family member; (3) death of a family member; (4) the taxpayer’s hearing does not begin within a reasonable time of their scheduled hearing time; or (5) other reasons beyond the control of the petitioner.

²⁵ We contacted Bay, Broward, Brevard, Charlotte, Dade, Desoto, Duval, Hillsborough, Lake, Lee, Manatee, Nassau, Orange, Palm Beach, St. Johns, and Volusia counties. These counties use different methods to collect and report value adjustment board data, and many could not report data on rescheduled cases.

These strategies include creating informal dispute resolution processes, establishing performance requirements in magistrate contracts, and using innovative scheduling techniques.

To divert some cases from the value adjustment board process, many counties encourage petitioners to contact the property appraiser to attempt to informally resolve the dispute (i.e., counter changes). In this process, a petitioner meets with the appraiser and may provide additional information regarding the property’s assessment or property tax exemptions. The property appraiser’s staff evaluates the information and may change the assessment or at least clarify the reasons for the appraiser’s assessment. For example, the Pasco County property appraiser’s office reported that in 2009 it informally resolved petitions involving 4,203 parcels.²⁶

In addition, counties have established performance measures in their contracts with the special magistrates who conduct value adjust board hearings. For example, the Orange County value adjustment board requires its magistrates to provide recommended decisions within one week of hearings; magistrates can face a financial penalty for not meeting this standard.

Some counties have also developed procedures to help address hearings where petitioners or their representatives fail to appear. As shown in Exhibit 4, four counties canceled over 18,000 hearings for the 2008 tax year because of no-shows.

Exhibit 4
For the 2008 Tax Year, There Were Over 18,000 No Shows for Hearings in High Volume Counties

County	Hearings Held	Hearings for Which Petitioner or Representative Did Not Appear
Miami-Dade	53,982	9,127 (16.91%)
Broward	10,200	5,711 (55.99%)
Hillsborough	2,404	1,460 (60.73%)
Palm Beach	2,278	1,780 (78.14%)
Total	68,864	18,078 (26.25%)

Source: OPPAGA analysis.

To address this problem, Hillsborough County calls property owners one to two days prior to the hearing as a reminder. The Manatee County clerk’s office schedules multiple hearings within each two-hour period, which helps the board be productive when some hearings are cancelled due to no shows.

What costs are associated with the value adjustment board process?

Both counties and property owners incur costs in the value adjustment board process, and some counties reported that these costs have increased due to workload and rule changes. The process can also create fiscal challenges for local governments if hearings for one tax year overlap the next year.

Value adjustment board operating costs have increased in recent years. Board operating costs vary by the size of the county, with small counties generally receiving few petitions and incurring relatively low costs. These costs include personnel costs for the staff and attorneys who support the process and the special magistrates who hear petitions, as well as software or other administrative expenses. County property appraisers also incur costs to gather and present evidence supporting the challenged property appraisals.

The Department of Revenue does not maintain value adjustment board cost information. However, some counties reported that such costs have increased significantly in recent years. For example, Lee County officials reported that board expenditures grew by 182% between 2006 and 2009, increasing to \$319,970. Charlotte County officials similarly

²⁶ Not all county appraisers track the number of counter changes and some may conduct fewer counter changes, depending on resources. For example, the Miami-Dade property appraiser’s office indicated that the office has limited resources to conduct counter changes.

reported that board costs grew from \$50,100 in 2008 to \$73,400 in 2009.

County officials reported that current filing fees do not cover value adjustment board expenses, with fees covering from 5.1% to 66.6% of board expenses in 2009 (see Exhibit 5). For example, Lee County officials reported that filing fees were \$78,385, or 24.5%, of board costs for the 2009 tax cycle. During the same period, Charlotte County reported that filing fees were \$13,605, or 18.5%, of board costs. Fees in Palm Beach County were \$296,635, or 50.9%, of total board costs while in St. Lucie fees were \$37,465 or 66.6%, of board costs.

**Exhibit 5
County Value Adjustment Board Expenses Exceeded Filing Fees for the 2009 Tax Year**

County	Value Adjustment Board Expenses	Filing Fees Collected	Fees as a Percentage of Expenses
Bay	\$ 83,020	\$ 4,260	5.1%
Manatee	\$185,665	\$ 18,810	10.1%
Nassau	\$ 88,334	\$ 13,095	14.8%
Hillsborough	\$594,943	\$101,918	17.1%
Charlotte	\$ 73,423	\$ 13,605	18.5%
Lee	\$319,970	\$ 78,385	24.5%
Volusia	\$198,610	\$ 48,885	24.6%
Orange	\$408,729	\$118,415	28.9%
Palm Beach	\$581,964	\$296,635	50.9%
St. Lucie	\$ 56,192	\$ 37,465	66.6%

Source: OPPAGA analysis.

County officials reported that a 2010 administrative rule change that required value adjustment boards to hire private legal counsel also increased board operating costs.²⁷ Previously, county or school board attorneys were authorized to serve as counsel to the value adjustment board. Lee, Manatee, and Palm Beach counties reported that this rule change will increase attorney costs; Lee County officials estimated that its costs will increase by \$17,000.

Value adjustment board participants also incur costs. In addition to value adjustment board costs, property owners and county appraisers also incur costs for the process. Property owners must pay a \$15 filing fee, must spend time spent gathering evidence and

attending hearings, and may incur costs to hire tax professionals who assist in the appeal. Tax professionals typically work on a contingency basis and receive a portion of the savings if the property value and taxes are reduced.

Property appraisers incur costs to prepare for and attend hearings, particularly those involving multiple parcels or high value properties; these cases are complex and require more time to prepare and defend. Some county appraisers were able to report these costs. For example, the Bay County property appraiser reported \$20,000 in expenses for the 2009 tax year, while the Miami-Dade County property appraiser estimates that it will spend \$5.2 million to manage value adjustment board appeals for the 2009 tax cycle.²⁸

The value adjustment board process can have fiscal implications for local governments. In addition to the costs of administering the value adjustment boards, the process can have other implications for local governments. Local property tax revenues are reduced when petitioners successfully obtain a reduction in their property assessment. Statewide in 2008, value adjustment boards reduced property values by \$7,793,794,247 resulting in net property tax reductions of \$158,825,585 (0.5% of total taxes levied).²⁹ These reductions were substantial for some local governments. For example, the Lee County value adjustment board reduced county taxable values by over \$110 million, resulting in a \$1.8 million net county tax reduction.^{30, 31}

Delays in certifying property tax rolls due to the value adjustment board process can also affect local governments. County property appraisers are required to certify the prior

²⁸ Miami-Dade County started valuation hearings for the 2009 tax cycle in April 2010. During the same month, the Miami-Dade County Commission authorized 29 additional positions for the property appraiser to accelerate the completion of value adjustment board hearings for the 2009 tax year.

²⁹ The total 2008 property tax levy was \$31,849,347,751.

³⁰ School and other taxing authority taxable values and net tax impact may differ.

³¹ Section 200.065(6), *F.S.*, provides that municipalities, counties, school boards, and water management districts may adjust administratively their adopted millage rate without a public hearing if the taxable value within the jurisdiction of the taxing authority as certified pursuant to statute is at variance by more than 1% with the taxable value shown on the roll to be extended.

²⁷ Rule 12D-9.008, *F.A.C.*

year's final property tax rolls to the Department of Revenue by July 1 of each year. The department reviews the final tax rolls and certifies them to the Department of Education, which uses this information to determine the amount of local revenue each school district has not collected during the prior tax cycle.

As of November 2010, a number of school districts, including those in Miami-Dade, Duval, and Broward counties, were unable to recover \$51.8 million in uncollected taxes for Fiscal Year 2008-09. These funds will be recovered in subsequent fiscal years, after the value adjustment board process is completed, and the Department of Revenue certifies the 2009 taxable value for these counties.

What options could the Legislature consider to modify the value adjustment board process?

The 2009 Legislature modified the value adjustment board process by eliminating the presumption of correctness in proceedings involving the county property appraiser's office, making it easier for property owners to challenge appraisals. The value adjustment board process was also changed by 2010 amendments to Department of Revenue rules that govern how board hearings are scheduled. The full effects of these changes on the timeliness of the value adjustment board process may not be evident for some time. The department is also considering additional rule changes as well as legislative proposals for the 2011 session.

In addition, counties reported that the number of value adjustment board petitions they receive has substantially declined over the past year. For example, by mid-October 2010, Hillsborough County reported that petition volume decreased by 57% between 2009 and 2010, and Palm Beach County reported a 41% decrease. This trend may be due in part to the substantial fall in statewide property values, which has reduced property assessments. As a result, counties may be able to process value adjustment board petitions in a shorter time than in prior years.

However, if the Legislature wishes to make additional changes to the value adjustment

board process, it could consider several options to (1) shorten the process; (2) address board costs and other fiscal implications; and (3) increase accountability in the process. Exhibit 6 presents the advantages and disadvantages of options within each of these categories.

Shorten the value adjustment board process. To address the increase in time needed to complete the value adjustment board process in some counties, the Legislature could establish a statutory deadline by which counties must finish the process. However, a statutory deadline could increase costs for some counties that would have to hire additional magistrates and provide for additional hearing space. In addition, a statutory deadline could be a detriment to property owners by reducing their opportunity to be heard.

Alternatively, the Legislature could address the effect of rescheduled hearings and the required 25-day notice for each reschedule by limiting the number of times hearings can be rescheduled at the property owner's request and eliminating the 25-day notice requirement for rescheduled hearings. The primary advantage of these changes is that they would improve counties' ability to complete the process more quickly and eliminate delays that affect school district budgeting and revenue recovery. However, these options could negatively affect petitioners by reducing their opportunities to be heard and to seek tax relief.

Address board costs and other fiscal implications. Because petition filing fees may cover only a small portion of value adjustment board costs, counties often must fund the process using other resources. To allow counties to recover a larger portion of board costs, the Legislature could increase the statutory cap on petition filing fees. Further, to assist property owners who may be due a refund, the Legislature could allow partial certification of tax rolls, which would enable taxing authorities to issue refunds before the value adjustment boards complete all hearings; property owners that still owe taxes would obtain a final tax bill prior to completion of board hearings. However, a partial tax roll certification could also create confusion regarding petitioner timelines for appealing board actions to the courts.

In addition, the Legislature could impose the same good faith payment requirements for value adjustment board petitioners as is currently in effect for property owners who pursue circuit court relief. This change would improve local government’s cash flow by allowing them to recover a portion of taxes prior to final board action. However, property owners would likely oppose such a change, as it represents an increased financial burden for those seeking redress through the value adjustment board process.

Increase accountability in the board process. To address stakeholder concerns that the value

adjustment board process is not fair and unbiased, the Legislature could consider options to restructure the appeal process, such as giving the Division of Administrative Hearings authority to oversee the boards or by creating a regional process under the district courts. These options could help ensure that appropriate procedures are followed in board hearings and that participants do not show bias toward parties in the appeal. However, these options would restrict local control of the process and could increase state costs and create burdens for taxpayers who might have to travel longer distances for board hearings.

**Exhibit 6
The Legislature Could Consider Various Options to Modify the Value Adjustment Process**

Shorten the Duration of the Process		
Action	Advantages	Disadvantages
Implement a date certain by which counties must complete the value adjustment board (VAB) process each year. This option would require a statutory change.	<ul style="list-style-type: none"> ▪ Counties would be able to resolve property owner’s complaints in a timelier manner. ▪ Counties would be able to stay current with tax certificate sales. ▪ School districts would be current with their prior period funding adjustment millage. 	<ul style="list-style-type: none"> ▪ VAB costs for some counties would increase, because they would have to hire additional magistrates and provide for appropriate hearing rooms. ▪ Economic changes that significantly affect property values could create a burden for counties that need to quickly address resulting workload changes.
Limit the number of for cause reschedules to two. This option would require an administrative rule change by the Department of Revenue.	<ul style="list-style-type: none"> ▪ Would make it more likely the VAB could complete its work in a shorter time. ▪ May also reduce the VAB’s costs by reducing the number of hearings and the time of VAB staff and magistrates. 	<ul style="list-style-type: none"> ▪ Could be a detriment to the property owner, because it reduces the property owner’s opportunities to be heard. ▪ Would require statutory change in order for the department to amend this rule.
Eliminate the 25-day notice when a hearing is rescheduled. This option would require an administrative rule change by the Department of Revenue.	<ul style="list-style-type: none"> ▪ Would reduce the overall time needed to complete the VAB process. 	<ul style="list-style-type: none"> ▪ Could be a detriment to the property owner, because it reduces the property owner’s time to prepare for a rescheduled hearing. ▪ May reduce the time for evidence exchange in complex commercial cases. ▪ Would require statutory change in order for the department to amend this rule.
Address Board Costs and Other Fiscal Implications		
Action	Advantages	Disadvantages
Modify the current filing fee structure to increase the fee cap to between \$25 and \$50. This option would require a statutory change.	<ul style="list-style-type: none"> ▪ Would allow counties to recover a greater portion of the costs associated with the VAB process. 	<ul style="list-style-type: none"> ▪ Could deter some consumers from appealing property valuation.
Allow partial certification of the tax rolls. This option would require a statutory change.	<ul style="list-style-type: none"> ▪ Would allow the tax collector to send refunds to VAB petitioners sooner. 	<ul style="list-style-type: none"> ▪ Property owners have 60 days after a final VAB decision to file an action with the circuit court. Partial certification of the tax roll could cause some confusion because petitioners’ 60-day clock would not be uniform for all petitioners.

Address Board Costs and Other Fiscal Implications		
Action	Advantages	Disadvantages
<p>Require property owners to pay a portion of their taxes when filing a petition, or no later than March 31. Such a 'good faith payment' is consistent with current Florida law for property owners filing with the circuit court. In addition, other states (Georgia, Maine) require property owners to pay a portion of their taxes when they file an appeal. This option would require a statutory change.</p>	<ul style="list-style-type: none"> Would improve local government's cash flow by allowing collection of a portion of taxes owed by property owners pursuing a VAB appeal. May advantage petitioners in instances where the board decides against them, because it would reduce the amount of interest owed on property taxes due. 	<ul style="list-style-type: none"> Property owners may oppose this option because it would increase the financial burden on petitioners.
Increase Accountability in the Board Process		
Action	Advantages	Disadvantages
<p>Make the board process independent of local influence.</p> <ul style="list-style-type: none"> Implement a regional process under the oversight of the district courts of appeal, with the court clerk responsible for hiring the board attorney and special magistrates. This option would require a statutory change. Alternatively, assign the Division of Administrative Hearings (DOAH) oversight of the process. This option would require a statutory change. 	<ul style="list-style-type: none"> May improve the perceived fairness of the process and reduce petitioner concerns about undue influence by local officials who all work together and have established relationships. DOAH hearing officers may be better able to help ensure that hearings are fair, independent, conducted according to state law, and would provide an enforcement venue outside of court proceedings. 	<ul style="list-style-type: none"> Would require additional resources for the agencies assigned these duties. District courts would have to have necessary hearing space for all the value adjustment board hearings. Could reduce citizens' ability to influence the process; to the extent that the VAB is composed of local elected officials, voters can currently hold these individuals accountable at the polls. The district courts of appeal encompass multiple counties within the state. Such a change would increase costs for property owners (who may feel the need to hire professional counsel and travel significant distances to attend proceedings) and local property appraisers (who would have to defend each assessment).

Source: OPPAGA analysis.

Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Executive Director of the Department of Revenue to review and respond.

The Executive Director's written response has been reproduced in Appendix B.

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-9213), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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 Kathy McGuire, OPPAGA Interim Director

Appendix A

The Number of Parcels Involved in the Value Adjustment Board Process Has Increased and Varies by County

The number of parcels involved in the value adjustment board process increased from 138,781 in 2006, to 229,867 in 2008. This represents a substantial increase from 2001, when appealed parcels totaled 63,073. The number of parcels involved in property tax appeals in 2008 varies by county, ranging from no appeals in Baker County to 98,348 in Miami-Dade County, as shown in Table A-1.

Table A-1
The Number of Parcels Represented in the Value Adjustment Board Process Increased Between 2006 and 2008

County	Total Parcels		
	2006	2007	2008
Alachua	307	55	1,476
Baker	1	30	0
Bay	5,195	2,518	1,414
Bradford	18	7	8
Brevard	2,792	2,422	5,112
Broward	34,460	33,256	37,356
Calhoun	2	1	2
Charlotte	875	1,155	914
Citrus	1,504	2,086	1,198
Clay	73	111	184
Collier	390	264	1,046
Columbia	1	7	6
Desoto	267	333	280
Dixie	20	42	46
Duval	3,748	5,571	Not Available
Escambia	2,412	1,532	1,125
Flagler	449	21	11
Franklin	70	25	153
Gadsden	2	3	4
Gilchrist	8	7	2
Glades	19	8	82
Gulf	5	9	83
Hamilton	6	1	3
Hardee	34	21	43
Hendry	1,677	136	190
Hernando	113	104	330
Highlands	12	30	37
Hillsborough	6,628	9,035	14,635
Holmes	67	2	8
Indian River	188	282	1,873
Jackson	5	7	12
Jefferson	108	160	57

County	Total Parcels		
	2006	2007	2008
Lafayette	0	1	0
Lake	156	360	227
Lee	2,991	8,569	7,240
Leon	43	49	363
Levy	9	14	18
Liberty	0	0	0
Madison	18	11	31
Manatee	428	710	562
Marion	636	1,230	1,207
Martin	72	200	501
Miami-Dade	48,147	62,042	98,348
Monroe	154	114	45
Nassau	34	207	773
Okaloosa	132	28	170
Okeechobee	11	12	35
Orange	4,020	5,562	14,951
Osceola	8	1,027	551
Palm Beach	8,050	11,063	15,403
Pasco	1,303	2,371	1,708
Pinellas	1,834	2,146	4,284
Polk	138	167	3,460
Putnam	159	130	388
St. Johns	106	1,658	2,192
St. Lucie	535	1,433	2,393
Santa Rosa	58	6	18
Sarasota	1,182	2,768	1,008
Seminole	663	820	1,974
Sumter	0	10	0
Suwannee	72	29	38
Taylor	0	11	18
Union	78	124	74
Volusia	6,186	6,294	4,158
Wakulla	20	4	2
Walton	66	13	30
Washington	16	10	7
Total	138,781	168,434	229,867

Source: Department of Revenue.

Appendix B



Executive Director
Lisa Vickers

Child Support Enforcement
Ann Coffin
Director

General Tax Administration
Jim Evers
Director

Property Tax Oversight
James McAdams
Director

Information Services
Tony Powell
Director

December 22, 2010

Ms. Kathy McGuire, Interim Director
Office of Program Policy Analysis and
Government Accountability
The Florida Legislature
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Ms. McGuire:

We appreciate the opportunity to respond to the findings of OPPAGA's December 2010 report, "Time and Costs Are Increasing for Counties to Complete the Value Adjustment Board Process."

As noted in the report, recent laws have changed the value adjustment board process. Chapter 2008-197 (House Bill 909), L.O.F., established additional requirements for value adjustment board proceedings, and instructed the Department of Revenue to develop a uniform policies and procedures manual for use by the boards, special magistrates, and taxpayers in proceedings before value adjustment boards. Chapter 2009-121 (House Bill 521), L.O.F., revised the requirements for presentation of evidence and the standard of proof related to challenges to ad valorem property assessments. We believe the intent of these new laws is to establish a more comprehensive, uniform, accessible process.

The Department worked closely with taxpayers, local governments, and other stakeholders to draft and revise new rules to implement these law changes. We received more than 1,600 comments and suggestions on ways to improve the VAB process. The vast majority of the input highlighted the need to provide taxpayers with fair hearings, a more level playing field, and greater due process protections. The set of rules that took effect in March 2010 was designed to promote transparency and trust in the VAB process for all participants.

We agree with your finding that the recent statutory and rule changes may have contributed to lengthening the value adjustment board process for some counties, and that there are opportunities to increase the efficiency of the process that the Legislature could consider.

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Ms. Kathy McGuire
December 22, 2010
Page 2

We would like to comment on two of the options for legislative action listed in your report.

1. "Limit the number of for cause reschedules to two."

During the nine months of public meetings, workshops, and rule hearings held between March and December 2009, Revenue received several comments from taxpayers and value adjustment boards requesting that Revenue's proposed rules provide an opportunity for petitioners to reschedule a hearing due to circumstances beyond their control. Such good-cause rescheduling was common practice in many parts of the state and was widely regarded as necessary to ensure taxpayers received due process. Accordingly, Revenue promulgated Rule 12D-9.019(4)(b), F.A.C., which allows a petitioner to request a rescheduling for good cause by submitting a written request to the board clerk.

Florida Statutes currently do not address rescheduling a VAB hearing for cause, and Revenue's rules do not contain a limitation on the number of times a petitioner may request a good-cause rescheduling. The Legislature may wish to address this issue by providing specific guidance on good-cause rescheduling.

2. "Eliminate the 25-day notice when a hearing is rescheduled."

A second, related option contained in the report is to eliminate the 25-day notice when a hearing is rescheduled. We agree this requirement may result in delays and may not be necessary. However, because section 194.032(2), F.S., requires the board clerk to "notify each petitioner of the scheduled time of his or her appearance no less than 25 calendar days prior to the day of such scheduled appearance," and the statute is silent on notices for rescheduled hearings, pursuant to Chapter 120, F.S., Revenue cannot promulgate a rule that would reduce the number of days specified by section 194.032(2), F.S. The Legislature may wish to consider addressing this issue as well.

We appreciate OPPAGA's interest in the improvement of the value adjustment board process.

Please let me know if we may be of further assistance.

Sincerely,


Lisa Vickers

LV/hm/bs0

cc: Kim Mills, Director of Auditing, Office of Inspector General, Executive Office of the Governor
Kara Collins-Gomez, Staff Director, Government Operations, OPPAGA
Sharon Doredant, Inspector General, Department of Revenue
James McAdams, Director, Property Tax Oversight, Department of Revenue