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**Sent:** Monday, January 11, 2021 10:25 PM  
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**Subject:** Deficiencies in DOR proposed rules 12-9 and 12D-16.002

Dear Mike Cotton,

On December 21 and 22, 2020, DOR published A Notice of Proposed Rulemaking for Rules 12-9 and 12D-16.002 which states, "*Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.*"

This is being sent to you because you are the only agency contact listed on the published Notices. Please see the attached cost information and alternatives.

Thank you,  
Sara Cucchi

On December 21 and 22, 2020, the Department of Revenue (DOR) published a Notice of Proposed Rulemaking for Rules 12-9 and 12D-16.002 which states, "Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice."

The information provided below shows that DOR's current statement of regulatory costs is incorrect, and also proposes a lower cost rule alternative which accomplishes the objectives of the law being implemented.

### Overview of DOR's Property Tax Oversight Duties

This overview provides essential context for the DOR's training and certification program that is the subject of the proposed rules at issue.

DOR is a Constitutional State Agency charged with critical and essential Property Tax Oversight duties. For example, Article 7 Section 8 of the Florida Constitution states, "State funds may be appropriated to the several counties, school districts, ... upon such conditions as may be provided by general law. These conditions may include the use of relative ad valorem assessment levels determined by a **state agency** designated by general law." This Constitutional provision is implemented in Florida Statute Chapters 193 and 195 and in Section 1011.62. The "state agency" that determines these Constitutional "**assessment levels**" is DOR's Property Tax Oversight Program.

One of DOR's key responsibilities to Florida's property taxpayers is summarized in Florida Statute Section 195.0012, which states: "*It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the **state's responsibility to secure a just valuation** for ad valorem **tax purposes** of **all property** and to provide for a **uniform assessment** as between property **within each county** and property **in every other county** or taxing district.*"

The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) explains DOR's Constitutional Property Tax Oversight duties along with the need for DOR to lawfully perform these Constitutional duties:

*"**To ensure that taxpayers are treated equitably** within and among counties, the Florida Constitution and state law require that county property appraisers assess property uniformly and at just value. This requirement also helps **ensure that state funds are distributed equitably** among school districts through the Florida Educational Finance Program. The Department of Revenue's Property Tax [Oversight] Program **provides state supervision of county appraisers' activities** to ensure that all property is placed on county tax rolls and uniformly assessed at just value."*

*"The Property Tax [Oversight] Program is an **essential state function**."*



***"State oversight is needed to ensure that taxpayers are treated equitably within and among counties and that state funds are distributed equitably among county school districts through the Florida Educational Finance Program."***

Part of achieving this goal involves DOR's statutory duties (under FS sections 145.10 and 195.002) to "establish and maintain a certified Florida property appraiser program" and to "conduct schools to upgrade assessment skills of both state and local assessment personnel."

### **DOR's Flawed Proposed Rules on Training and Certification are in Conflict With DOR's Constitutional and Statutory Duties to Oversee the Property Tax Process**

DOR's proposed rules would allow continuation of DOR's current corrupt practices of:

- DOR appointing county property appraisers (whom DOR is supposed to oversee) to fill nine of the ten member positions on DOR's Training and Certification Committee.
- DOR allowing property appraisers to determine and approve their own certifications that gives certified property appraisers a pay raise under Chapter 145, Florida Statutes.
- Allowing the overseen (property appraisers) to determine and control the assessment oversight certification of the overseer (DOR employees).

There is no statutory authority for DOR to have rules that create conflicts of interest and that allow the overseen (property appraisers) to control the certifications of the overseers (DOR employees). Previously, when asked for their statutory authority for rules allowing this arrangement, DOR has responded with vague, non-specific references to sections 195.002 and 145.10, neither of which allow DOR's practices.

Further, DOR's proposed rules are woefully inadequate because they do not require any pre-certification training whatsoever on the substantial body of law and assessment ethics that should drive Florida's annual ad valorem tax process. Likewise, DOR's proposed rules do not require any pre-certification training on key subjects such as: Taxpayer Rights, the VAB process, the Standard Measures of Value, the Uniform Policies and Procedures Manual, or the DOR Levels of Assessment used by the Department of Education to distribute school funding among Florida counties for grades K-12. A lot of Florida-specific math and logic is involved in the lawful duties of property appraisers, but the DOR proposed rules do not address this area of dire need.

As an owner of taxable real property in multiple Florida counties and as a former member of a county Value Adjustment board, I have first-hand experience seeing, hearing, and reading evidence of incompetence and unethical behavior that DOR could address by amending its proposed rules to include pre-certification training on Florida-specific law, assessment standards, related mathematics, and appraisal-specific ethics.

## DOR's Incorrect and Misleading Statements

Less than 21 days ago, in its Notice of Proposed Rule for 12-9 and 12D-16.002, DOR erroneously stated:

- *"The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule."*
- *"The Agency has determined that ... the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S."*

Criteria in Section 120.54(2)(a), F.S. includes whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment or is likely to increase regulatory costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

Below are recent examples, which total \$5 million dollars in the aggregate, of taxpayer costs that could be avoided in the future through changes to DOR's proposed rules. These examples were reported in the news in less than one year.

### Evidence of Adverse Impacts on Florida Citizens, Counties, and Job-Creating Businesses

DOR's Training and Certification Rules are key in whether local property appraisers and DOR staff have the knowledge, skill, and abilities to perform their duties as required by Florida law to ensure that property tax law is applied uniformly so that property assessments are accurate, uniform, and fair.

DOR's ineffective proposed training certification rules manifest in incompetency and noncompliance with Florida law. This results in unnecessary litigation costs, additional costs for unfairly high tax bills when litigation is cost prohibitive, misuse of taxpayer dollars, and inequitable school funding, in addition to the loss of public trust in Florida government.

These costs can adversely impact county budgets and the property values and tax rates which adversely affect and substantially increase costs to Florida citizens (like me) and job-creating businesses.

Below are some recently published quotes showing just a small sample of these types of costs.

- **"New Orange property appraiser wants to move past predecessor's lawsuits" by Stephen Hudak published in Orlando Sentinel on December 24, 2020**



*"This office should not be on the news at six o'clock every night," Mercado said, referring to audits, probes, scandals and whistle-blower complaints that led to a Florida Department of Law Enforcement investigation related to outgoing appraiser, Rick Singh.*

*It also led to an \$800,000 pile of legal bills in 2020 that Singh paid with taxpayer dollars to defend himself."*

- **"Property Appraiser Charged With \$200,000 Fraud" by Associated Press published in both US News and World Report and News Channel 8 WFLA on April 18, 2020**

*"CRAWFORDVILLE, FLA. (AP) — A county property appraiser in Florida illegally paid himself more than \$176,000 over three years and made nearly \$27,000 in fraudulent charges on his government-issued credit card, authorities said.*

*Wakulla County Property Appraiser Brad Harvey, 45, was arrested Friday and charged with two counts of organized scheme to defraud, according to the Florida Department of Law Enforcement. Gov. Ron DeSantis signed an executive order Friday evening suspending Harvey from office."*

- **"Audit: Former Seminole County tax collector spent \$1.6M on unnecessary positions" reported by News Chanel 2 WESH updated on December 3, 2020**

*"Former Seminole County tax collector Joel Greenberg is accused of misspending about \$1 million on vendor contracts and more than \$1.6 million on unnecessary positions."*

- **"Audit: Joel Greenberg misspent millions while serving as Seminole tax collector" by Emilee Speck for WKMG published on November 5, 2020**

*"Auditors also compared the Seminole County Tax Collector's legal fees to surrounding counties.*

*"A typical Florida Tax Collector might incur between \$10,000 to \$20,000 in legal fees in any given year," auditors wrote. Seminole County had incurred more than \$1.4 million since Greenberg took office for an in-house attorney, lobbying and other legal costs."*

Approval of county property appraiser and tax collector budgets is a DOR statutory oversight duty and DOR approved the budgets for each of these three elected officials. In its budget approval process, DOR failed, for at least three years, to find any of the glaring problems noted above. The Governor and Cabinet should insist upon an independent outside audit of DOR's process and practices for reviewing and approving the budgets of county officials.

Unfortunately, these examples of misuse of public funds are not addressed in DOR's proposed rules on pre-certification training.

Additionally, counties and taxpayers pay unnecessary litigation costs that could be avoided if DOR required pre-certification training on Florida law. Briefly described below are two recent appeals court decisions where property appraisers were found not complying with current Florida law:

1) **Darden Restaurants Inc. V. Singh, Case No. 5D16-4049 (Fla. 5<sup>th</sup> DCA March 1, 2019)**

On April 1, 2019, after the decision in Darden was issued, attorney Robert Goldman, representing the Chamber of Commerce, wrote in an article:

*"In a long-running case followed closely by business groups, the Fifth District Court of Appeal underscored the Florida Legislature's intent that tax appraisers (called "Property Appraisers" in Florida) must derive their valuations using professionally accepted appraisal practices."*

*"But old habits die hard, and some property appraisers continued operations as before, defending their actions by relying on the pre-2009 state of the law."*

*"The issue for the community of taxpayers as a whole was not whether Darden's expert reached the right value conclusions or even whether his methodology was sound. The issue was whether a law commanding property appraisers to adhere to the approved practices of their discipline is to be given effect. The Fifth District's answer is an unequivocal "yes,""*

Yet, the DOR's proposed training and certification rules do not require any pre-certification training on the 2009 legislation which this court found the property appraiser did not follow.

2) **Rick Singh, as property appraiser v. Walt Disney Parks and Resorts US, Inc, Case No. 5D18-2927 (Fla 5<sup>th</sup> DCA August 7, 2020):**

*"The trial court concluded that by including value attributable to Disney business activities on the Property, **Appraiser** applied the Rushmore method in a way that **violated Florida law.**"*

*We [the appeals court] agree with the trial court that Appraiser, in the manner in which he applied the Rushmore method, impermissibly included the value of Disney's intangible business assets in its assessment."*

Once again, DOR's failure to require pre-certification training on Florida law and Florida-specific appraisal practices costs taxpayers huge sums of money in overpayment of taxes and having to spend fortunes in attorney fees to arrive at lawful assessments.



These pre-certification training deficiencies should be addressed by DOR in its pre-certification training rules for property appraisers and DOR staff.

**A Lower Cost Alternative Would Accomplish the Objectives of the Law and Greatly Reduce Costs for Florida Citizens and Job-Creating Businesses**

Changes to DOR's proposed training and certification rules which would lower costs and accomplish the objectives of the law being implemented include, but are not limited to:

- 1) DOR's proposed rules should be amended to require the Training and Certification Committee members to include private industry appraisers, CPAs, tax attorneys, taxpayers (owners of commercial and homestead real property and owners of tangible personal property), real estate professors, and only one (or two max) county appraisers. The current proposed rules allow appointment of nine property appraiser members. By allowing property appraisers to determine and approve their own pay raises and allowing property appraisers to determine and approve the certification of DOR employees, the proposed rules provide conflicts of interest, destroy public trust, and enable property appraisers to determine their own pre-certification training requirements.
- 2) DOR's proposed rules should be amended to require specific and detailed pre-certification training, for both property appraisers and tax collectors, on how to manage budgets in accordance with law and best practices including actions to take and actions to avoid. Despicably, the proposed rules do not require any pre-certification training on the correct expenditure of taxpayer funds and the proper management of budgets. Training for DOR staff who evaluate and approve budgets should include methods and criteria for identifying budget abuse.
- 3) DOR's proposed rules should be amended to require pre-certification training on Florida law and standards. This law should include, but not be limited to, sections 193.011, 194.301, 194.3015, 1011.62, and the statutes and rules on Taxpayer Rights. Other pre-certification training subjects should include, but not be limited to, Taxpayer Rights, the VAB process, the Standard Measures of Value, the Uniform Policies and Procedures Manual, and assessment mathematics such as the DOR Levels of Assessment used by the Department of Education to distribute school funding among Florida counties for grades K-12.
- 4) DOR's proposed rules should be amended to require staff to annually complete continuing education for re-certification. Laws and professional standards change often and knowledge and skills become rusty, necessitating continuing education. Completion of the updated VAB training should be required each year for property appraisers and their staff.

It is unclear why DOR's proposed rules do not require, for PA staff or DOR staff, continuing education given the statutory requirement in 145.10(2)(c) for "continuing education" each year "to remain certified".

- 5) DOR's proposed rules should be amended to require a Florida-specific course in math for pre-certification training and continuing education. Math training should include, but not be limited to:
  - a) Correct methods for calculating levels of assessment (for both real property and tangible personal property) under Florida law to help prevent property appraisers and DOR staff from contributing to erroneous levels of assessment being sent to the Department of Education.
  - b) The discriminatory impact of the failure by numerous counties to make cost of sale deductions in arriving at just values of tangible personal property, to help prevent adverse impacts on Florida's job-creating businesses, particularly small businesses.
  - c) The math subjects related to assessment roll production, VAB training, Standard Measures of Value, and other documents and information posted on DOR-PTO's website.
  
- 6) DOR's proposed rules should be amended to include required exam criteria, which could be benchmarked using the appraiser rules of the Department of Business and Professional Regulation. DOR's proposed rules wrongly provide "*that the applicant makes a passing grade as determined by the course provider.*" DOR, and not some unknown course provider, should determine such passing standards. DOR should amend its proposed rule to specify exam requirements which include, but are not limited to:
  - a) A minimum passing exam grade of 75 percent.
  - b) Requiring the exam to consist of a high percentage of application-oriented questions that would show whether the appraiser can apply the learned material in different situations.
  - c) Requiring the exam to consist of no more than a small percentage of knowledge questions (using information that can be memorized for passing an exam).
  - d) Requiring the exam have a minimum number of question dependent on the course credit hours.
  - e) Requiring that the order of the examination questions not follow the sequence of the course content.
  - f) Prohibiting duplication of questions.



- g) Requiring submittal of tests to DOR to confirm exam requirements are met.
- 7) DOR's proposed rules should be amended to require and provide a Code of Ethics for property appraisers that is specific to the local assessment of taxable property based on Florida law.

The proposed rule 12D-16.002 and corresponding form eliminate a Code of Ethics and pledge to adhere to it. Further, DOR's proposed rule completely ignores the Governor's Executive Order 19-11, issued January 8, 2019, which requires each state agency to "*evaluate the current ethics policies at their agency*" and improve them - not remove them.

The Governor's Order requires Codes of Ethics to "*go beyond the statutory Code of Ethics for public officers and employees in Chapter 112, part III, of the Florida Statutes*" and for the agency to adopt Codes of Ethics "*with adjustments made accordingly for the program requirements and variables unique to the agency.*"

DOR should comply with the Governor's policy by amending its proposed rule and form to require and provide a meaningful Code of Ethics unique and specific to Florida's property tax system. There is no excuse for DOR to not address the glaring Ethics Deficiencies in its property tax oversight duties. Some examples of sources (including profession-specific ethics codes) that DOR could use for ethics benchmarking are listed below.

- The Department of Business and Professional Regulation provides for appraisers to comply with the Uniform Standards of Professional Appraisal Practice which include numerous appraisal-specific ethics provisions including an Ethics Rule.
- The International Association of Assessing Officers publishes a Code of Ethics for assessors that could easily be adapted for use in a Florida-specific Code of Ethics.
- The National Society of Professional Engineers publishes a Code of Ethics for Engineers that contains a lot of useful information that could easily be adapted to Florida property assessment activities.
- Florida law contains a wealth of information that could easily be adapted for a Florida-specific Code of Ethics. Relevant laws include, but are not limited to, sections 193.011, 194.301, 194.3015, 1011.62, and the statutes and rules on Taxpayer Rights.

Thank you for allowing me to provide information regarding DOR's statement of estimated regulatory costs and to provide lower cost alternatives.

Sara Cucchi

**From:** Sara Cucchi <[cucchi.vab@gmail.com](mailto:cucchi.vab@gmail.com)>

**Sent:** Wednesday, January 13, 2021 8:34 AM

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**Subject:** Questions About DOR's Rule Hearing on January 13, 2021

Dear Mike Cotton and Janet Young,

1. I renew my objection to the Department's statement to the Governor and Cabinet on December 15, 2020 to *"further request approval to file and certify with the Secretary of State for final adoption under Chapter 120, Florida Statutes, if the substance of the proposed rules remains unchanged upon reaching the date applicable for final adoption."*

In the event the Department ignores my objection, what is the Department's planned date for final adoption of proposed rules 12-9 and 12D-16.002 as quoted above from Debbie Longman's December 15 statement to the Governor and Cabinet?

How did or will the Department determine this planned date for final adoption?

2. Why did the Department not publish in its notice an invitation for taxpayers to submit written comments on these proposed rules and provide a taxpayer-friendly comment period of time after the Department publishes the transcript of today's hearing on the Department's website, to allow taxpayers to review the proposed rules along with the transcript in preparing written comments on these rules to DOR?

I am requesting the Department allow a written comment period of 30 days after the Department publishes on its website the transcript of today's hearing.

Will the Department agree to such 30-day period, and so state on the record at today's public rule hearing?

3. On January 8, 2019, Governor DeSantis issued Executive Order 19-11, addressing ethics and public trust as well as other subjects. The Governor's order directs each state agency to: *"... designate an individual at his or her agency to act as the agency's chief ethics officer."*

What is the name and job title of DOR's chief ethics officer? And, will this person attend today's rule hearing to explain why the Department has chosen to ignore, in its proposed rule 12-9 and related forms, industry standard ethics provisions consistent with professionally accepted appraisal practices?

4. Additionally, the Governor's Executive Order 19-11 directs state agencies to require ethics that: *"...shall impose clear, understandable standards that in many*



*instances will go beyond the statutory Code of Ethics for public officers and employees in Chapter 112, part III, of the Florida Statutes.”*

I specifically request the Department to have, at today’s hearing, the person who approved the Department’s decision to ignore this directive from the Governor and ignore industry standard ethics provisions consistent with professionally accepted appraisal practices. Does the Department agree to have this person at today’s hearing to answer questions on proposed 12-9 and related forms?

5. Proposed rule 12-9.0031, “*Approval of Courses*”, states approved courses “*must impart expertise*” in professionally accepted appraisal practices, appropriate appraisal methodologies, etc., and further states these courses will be approved by DOR employees. Surely, the DOR employees who make the determination of whether courses impart the required expertise would themselves have such expertise and would attend today’s public hearing to explain this rule. Will the Department ensure these employees attend today’s hearing to answer questions on proposed rule 12-9 and related forms?

Thank you for your assistance.

Sara Cucchi