

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Factors Used in Deriving Just Valuation
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: IDEN./SIM. BILLS: SB 722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>7 Y, 1 N</u>	<u>Levin</u>	<u>Williamson</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Section 193.011, F.S., lists the factors to consider when deriving just valuation of property as required by Article VII, s. 4 of the Florida Constitution. The bill amends this section to remove the requirement that property appraisers consider the highest and best use to which the property can be expected to be put in the immediate future when arriving at just valuation.

The bill adds a provision which requires property appraisers to appraise income-producing properties based solely on the income produced from that property.

Although this bill has not been heard at the Revenue Estimating Impact Conference, it may have a significant impact on local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill would eliminate the requirement that property appraisers consider the highest and best use to which a property can be expected to be put in the immediate future when arriving at just valuation. It also would require property appraisers to consider only the income from income producing property in determining just valuation. A significant percentage of non-homestead properties may experience a decrease in the assessed value of the property.

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Just Valuation

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, it has been well settled that "just valuation" is synonymous with "fair market value" and is defined as what a willing buyer and willing seller would agree upon as a transaction price for the property.¹

The Florida Constitution includes certain limitations to the just value criteria. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.² Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.³ In addition, the Save-Our-Homes amendment to the Florida Constitution provides a limitation to the extent that assessments for homesteads may be changed annually on January 1 of each year. Changes in assessment may not exceed the lower of three percent of the assessment for the prior year or the percent change in the Consumer Price Index.⁴ Counties and municipalities also may provide for reduction in the assessed value of historic properties and improvements to homesteads that are made to accommodate parent or grandparents in an existing homestead.⁵

Section 193.011, F.S., implements the just valuation requirement of the Constitution. It requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;⁶
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any executive order, ordinance, regulation, resolution or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;⁷
- Location of the property;⁸
- Quantity or size of the property;⁹

¹ *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

² Article VII, §4 (a), Florida Constitution.

³ Article VII, §4 (b), Florida Constitution.

⁴ Article VII, §4 (c), Florida Constitution.

⁵ Article VII, §4 (d) and (e), Florida Constitution.

⁶ Fla. Stat. §193.011(1).

⁷ Fla. Stat. §193.011(2).

⁸ Fla. Stat. §193.011(3).

⁹ Fla. Stat. §193.011(4).

- Cost of the property and the present replacement value of any improvements thereon;¹⁰
- Condition of the property;¹¹
- Income from the property;¹² and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.¹³

The Florida Supreme Court has held that “the appraisal of real estate is an art, not a science,”¹⁴ and “the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty.”¹⁵ In *Lanier v. Walt Disney World Company*, the court held that assessors are not obliged, under the law, to give each factor equal weight provided each factor is first carefully considered and such weight is given to a factor as the facts justify.¹⁶

Present Situation: Fair Market Value

The constitutional standard of fair market value includes a consideration of (1) the highest and best use of property; and (2) the three approaches to value.

A common definition of highest and best use is: “The reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.”¹⁷ A highest and best use analysis requires the appraiser to determine the most likely use for the property. Unless a change in the highest and best use is reasonably probable within the immediate future, the present use¹⁸ may represent the highest and best use of the property.¹⁹ While the actual use of the property may be the highest and best use of the property, in times of rapidly growing population and property value escalation, this is not always the case.

Once the highest and best use of the property is determined, the appraiser then applies one or more of the three approaches to value the property to arrive at an estimate of the fair market value.

There are three well-accepted approaches to valuing real estate: (1) the sales comparison approach; (2) the cost approach; and (3) the income approach. For any given property type, one of the three approaches to value might give a more accurate estimate of the fair market value of the property than the other two. It is not unusual for appraisers to use a combination of the approaches in order to arrive at the fair market value of the property.

The sales comparison approach estimates the value of real estate by looking at what similar pieces of real estate have sold for during the same time frame. Sales of properties that are similar in location, size, condition, and highest and best use, are used to determine the value of the property in question. Various adjustments are made to take into account the differences between the sales properties and the subject property.

The cost approach to valuation simply adds together the value of the land (determined by the sales comparison approach) with the cost of the improvements to arrive at the fair market value of the property. For older properties, the appraiser makes adjustments to consider the age and condition of the property or any other appropriate factors. Land values are market-derived and what a buyer is

¹⁰ Fla. Stat. §193.011(5).

¹¹ Fla. Stat. §193.011(6).

¹² Fla. Stat. §193.011(7).

¹³ Fla. Stat. §193.011(8).

¹⁴ *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).

¹⁵ *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).

¹⁶ *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 (Fla. 1975).

¹⁷ Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice*, 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.

¹⁸ Present use means “the existing use of real property as of the date of appraisal.” The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (Adopted November 16, 2002).

¹⁹ *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965).

willing to pay for new construction is always influenced by the amount the buyer might otherwise spend to buy an already existing similar property.

The income approach applies to properties where an income is typically derived from the real estate. The just valuation of the property is determined by studying how much revenue the property would generate if it were rented. The appraiser must consider operating expenses, taxes, insurance, maintenance costs, and the return or profit most people would expect for that type of property.²⁰ Purchasers of income-producing property typically base their offer to buy the property on the potential future income of the property, thus the income is the basis of the purchase price agreed upon between the willing buyer and willing seller.

Effect of Proposed Changes

The bill eliminates the requirement that property appraisers consider the factor of 'highest and best use' when arriving at just valuation. By removing this language property appraisers would only be required to evaluate the property based on its present use in conjunction with the other seven evaluation factors. The removal of the 'highest and best use' criteria may create disparities in value between like properties.

The bill requires property appraisers to disregard the other factors outlined in s. 193.011, F.S., and only use the income generated when arriving at just valuation of income-producing properties. Under these standards, property appraisers would not consider other factors such as the location, condition, or size of the property.

C. SECTION DIRECTORY:

Section 1 amends s. 193.011, F.S., to revise the requirements that property appraisers consider in arriving at just valuation.

Section 2 amends s. 192.011, F.S., to make conforming changes.

Section 3 amends s. 193.015, F.S., to make conforming changes.

Section 4 amends s. 193.017, F.S., to make conforming changes.

Section 5 provides an effective date of upon becoming a law and provides for application beginning January 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has not been to a Revenue Estimating Impact Conference, but the effect on local government revenues should be anticipated to be significant.

²⁰ The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (Adopted November 16, 2002).

2. Expenditures:

No direct fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A significant percentage of non-homestead properties may experience a decrease in the assessed value of the property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. By eliminating the requirement that property appraisers consider the highest and best use in determining the just valuation of a parcel of property, for those cities and counties that assessed their entire allotted constitutional millage on February 1, 1989, the bill may reduce the authority that counties and municipalities have to raise revenue.

2. Other:

Currently, limitations on ad valorem assessments based on the character or use of the property are contained within Article VII of the Florida Constitution. While the highest and best use currently is one of the eight criteria county property appraisers must consider in valuing property for ad valorem tax purposes pursuant to s. 193.011, F.S., the current judicial interpretation of "just valuation" as "fair market value" may require a highest and best use analysis. Limitation by general law may not withstand judicial scrutiny.

The requirement that just valuation of income producing properties be determined solely by the income produced from the property could raise constitutional concerns based upon Article VII, s. 2 of the Florida Constitution, which requires ad valorem taxation to be at a uniform rate within each taxing unit.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Public school funding

Public school funding is statutorily tied to property taxes through the Required Local Effort of School Boards (RLE). The legislature sets the RLE millage rate in the Appropriations Act. State general revenue funds the remainder of public schools. This bill may result in a decrease in local government revenue which could result in a greater need for funding from the state.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Committee on State Affairs adopted a strike-all amendment and reported the bill favorably with amendment. The strike-all amendment made several changes, including clarifying the definition of "present value" and "highest and best use" which were referenced in the original bill. It maintained the requirement in the bill that property appraisers only appraise income-producing properties using the income produced from that property.

In addition, the strike-all amendment:

- Provides that if actual receipt of the notice disputing the assessment is disputed, then the burden of proof is on the property appraiser to establish receipt by clear and convincing evidence.
- Requires the property appraiser to furnish justification of valuation to the taxpayer at least 15 days before the hearing, regardless of whether the taxpayer has requested the information in writing. The current standard is seven days and only if a written request is made by the taxpayer.
- Adds a new requirement that the filing fee for the petition be waived for a taxpayer who is eligible to receive one or more of the exemptions under the State Constitution.
- Makes changes to the membership of the Valuation Appraisal Boards (VAB). It requires the appointment of three members by the county commission and two members by the school board. The amendment also provides membership criteria.
- Permits the taxpayer to reschedule a VAB hearing an unlimited number of times for failure of the property appraiser to supply the valuation information needed to have the hearing. Additional rescheduling of the hearing may be granted to the taxpayer for medical reasons.
- Reduces from four hours to two hours the time a taxpayer may wait before being heard, and provides that failure to hear the taxpayer within that timeframe results in the hearing being rescheduled for a time reserved exclusively for the petitioner.
- Requires the taxpayer's filing fee to be refunded if the determination of the property appraiser is overturned.
- Requires interest to be paid to the taxpayer if the final assessment established is lower than the amount paid by the taxpayer; and if the value assessed by the property appraiser exceeds the actual value by more than 10 percent, reasonable attorney fees are awarded to the taxpayer.
- Shifts the burden of proof to the property appraiser in an administrative proceeding.
- Provides that in judicial actions the burden of proof shall be upon the party initiating the action.