

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Finance and Tax Committee

BILL: PCS/CS/SB 560

INTRODUCER: Finance and Tax Committee, Community Affairs Committee and Senator Atwater

SUBJECT: Taxpayers' Rights

DATE: April 14, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.	Fournier	Johansen	FT	Pre-meeting
3.			GA	
4.				
5.				
6.				

**I. Summary:**

The bill requires local governments to provide a single source for taxpayers to obtain information about local government revenues, expenditures, and contracts. In addition, the bill requires a condemning authority in an eminent domain proceeding to compensate a homeowner for the present value of the expected future tax benefit from Article II, section 4 (c), of the State Constitution (Save Our Homes). The bill clarifies the standard for determining highest and best use for purposes of deriving the just value of property. Finally, the bill provides and appropriates \$50,000 for a study of the assessment appeal process, including Value Adjustment Boards.

This bill substantially amends s. 73.071, s. 193.011, 195.052, 200.069 and creates several unspecified sections of the Florida Statutes.

**II. Present Situation:**

**Eminent Domain**

Eminent domain is the power of the state to take private property and convert it for public use subject to reasonable compensation. That power is limited by the federal and state constitutions. The Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without just compensation. Article X, section 6, of the Florida Constitution similarly limits the eminent domain power.

Chapter 73, F.S., requires condemning authorities to negotiate in good faith with the fee owner of the parcel to be acquired, provide the fee owner with a written offer, and, if requested, provide a copy of the appraisal upon which the offer is based. Most importantly, the condemning

authority must attempt to reach an agreement on the amount of compensation to be paid for the property. If no agreement is reached, pursuant to s. 73.071, F.S., eminent domain trials are argued before a twelve-person jury and have preference over other civil actions. The jury is to determine the amount of compensation for the property to be acquired.

### **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.<sup>1</sup>

The Florida Constitution authorizes certain alternatives to the just value standard for specific types of property. 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.<sup>2</sup> 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.<sup>3</sup> In addition, the Save Our Homes amendment to the Florida Constitution provides a limitation in the amount by which assessments for homesteads may be changed annually on January 1 of each year. Changes in assessment for the prior year may not exceed the lesser of three percent or the percent change in the Consumer Price Index.<sup>4</sup> Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character of use.<sup>5</sup> Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.<sup>6</sup>

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;<sup>7</sup>
- 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;<sup>8</sup>

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<sup>1</sup> *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).

<sup>2</sup> Article VII, §4 (a), Florida Constitution.

<sup>3</sup> Article VII, §4 (b), Florida Constitution.

<sup>4</sup> Article VII, §4 (c), Florida Constitution.

<sup>5</sup> Article VII, §4 (d), Florida Constitution.

<sup>6</sup> Article VII, §4 (e), Florida Constitution.

<sup>7</sup> Fla. Stat. §193.011(1).

<sup>8</sup> Fla. Stat. §193.011(2).

- Location of the property;<sup>9</sup>
- Quantity or size of the property;<sup>10</sup>
- Cost of the property and the present replacement value of any improvements thereon;<sup>11</sup>
- Condition of the property;<sup>12</sup>
- Income from the property;<sup>13</sup> 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.<sup>14</sup>

These criteria reflect the standard appraisal methodologies—cost approach, income approach, and sales comparison approach—that property appraisers and independent fee appraisers use in reaching an opinion of fair market value of a particular piece of property.

Taken together, the case law and statutory provisions require the property appraiser to consider the eight factors to determine a just valuation that represents what a willing buyer would pay a willing seller. If the appraiser relies on one factor, such as income, and arrives at a just value that is lower than fair market value, he or she has not met the legal requirements for establishing just value. Similarly, if the appraiser ignores or places little emphasis on a single factor, such as present use, and establishes a just value higher than fair market value, the appraisal is also improper. A single factor cannot be the basis for the assessment if the result is a value other than just or fair market value.

“Highest and best use” and “present use of the property” appear together in subsection (2) of s. 193.011, F.S. 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.”<sup>15</sup> Standard 6 of the Uniform Standards of Professional Appraisal Practice states that appraisers must consider existing land use regulations and reasonably probable modifications to such land use regulations.<sup>16</sup> There are several examples of Florida case law that provide guidance for considering uses that are not allowed by current land use regulations. Generally, Florida case law allows property appraisers to consider expected uses that are not allowed under current land use regulations when such regulations are not expected to be permanent, but only to the extent that such expected uses would influence the just value of the property as of the date of the appraisal.<sup>17</sup>

### **Truth in Millage (TRIM) Notices**

Section 200.069, F.S., provides for notice of proposed property taxes and non-ad valorem assessments to taxpayers, better known as TRIM notices. Each property appraiser is required to

<sup>9</sup> Fla. Stat. §193.011(3).

<sup>10</sup> Fla. Stat. §193.011(4).

<sup>11</sup> Fla. Stat. §193.011(5).

<sup>12</sup> Fla. Stat. §193.011(6).

<sup>13</sup> Fla. Stat. §193.011(7).

<sup>14</sup> Fla. Stat. §193.011(8).

<sup>15</sup> Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice*, 2002 Edition (Washington, D.C.: The Appraisal Foundation), page 218.

<sup>16</sup> *Ibid.* page 48.

<sup>17</sup> Florida Department of Revenue, *The Florida Real Property Appraisal Guidelines, Adopted November 2, 2002*, page 29.

prepare and mail to each taxpayer on the assessment roll a notice of proposed property taxes. This notice, the TRIM notice, is required to contain the following information:

- A list of all of the taxing authorities who have the power to levy property taxes.
- The property taxes assessed in the previous year in total and by taxing authority.
- The property taxes assessed in the current year in total and by taxing authority if no budget changes are made, also known as the “rolled-back rate.”
- Property taxes for the current year under the proposed budgets and millage rates set by each taxing authorities, and
- The date, time and location of public hearings on the local government’s proposed budgets and taxes.

The TRIM notice is very specific in what information is required and the form the information is to be presented in. The Department of Revenue is responsible for reviewing TRIM notices to ensure compliance with statutory requirements.

### **Local Government Annual Financial Reports**

Section 218.32 (1), F.S., requires that local governments submit to the Department of Financial Services (DFS) an Annual Financial Report covering their operations for the preceding fiscal year. DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database and makes that information available to the public in an electronic format. Submission of the annual report depends on whether or not the local government entity is required to have an annual audit; if no audit is required the deadline is April 30 of each year, and if an audit is required the deadline is no later than 12 months after the end of the fiscal year. If DFS does not receive a completed annual financial report from a local government entity within the required period, DFS must notify the Legislative Auditing Committee.

### **Federal Funding and Transparency Act of 2006**

The Federal Funding and Transparency Act of 2006 is a federal act that requires the full disclosure of all entities or organizations receiving federal funds beginning in fiscal year (FY) 2007 on a website maintained by the Office of Management and Budget.

### **Administrative Review of Property Taxes**

Part I of ch. 194, F.S., provides an administrative appeal process for any taxpayer who objects to the assessment placed on any taxable property, or whose application for an exemption is denied. The taxpayer may request an informal conference with the property appraiser or a member of his or her staff, or may appeal directly to the value adjustment board. A petition to the value adjustment board must be sworn to by the petitioner, and must meet the timetable set out in s. 194.011(3)(d), F.S.

Auditor General Report No. 2006-007, *County Value Adjustment Board Performance Audit*, was based on an audit of 14 county value adjustment boards. It identified several inconsistencies in the conduct of these boards across counties, as well as shortcomings in the documentation of

board decisions and potential conflicts of interest when county attorneys represent both the county and the value adjustment boards.

### III. Effect of Proposed Changes:

**Section 1** amends subsection (3) of s. 73.071, F.S., to include in the value of compensation that a jury shall determine the present value of the expected future tax benefits from the SOH assessment limitation.

**Section 2** creates s. 73.0725, F.S., to require the condemning authority to separately determine the present value of the expected future tax benefits from the SOH assessment limitation.

**Section 3** amends s. 193.011, F.S., to clarify the highest and best use and present use factors the appraiser must consider in arriving at just value. These standards are used by the Appraisal Standards Board and cited in the Department of Revenue's Real Property Appraisal Guidelines.

**Section 4** amends s. 195.052, F.S., to require ad valorem taxation data tabulated by the DOR to include the annual percentage increase in total non-voted ad valorem taxes levied by each city and county and information concerning the distribution of ad valorem taxes levied across various classifications of property including homestead and non-homestead residential, new construction, commercial, and industrial properties. The data must include the previous year's adopted millage rate, the current year's millage rate, and the current increase in taxes levied above the roll-back rate. The data must, at a minimum, be published on the DOR website and on the websites of all property appraisers, if available. The Department of Revenue shall publish the extended rolls for all counties not later than 90 days after receipt.

**Section 5** amends s. 200.069, F.S., to include the address of the county government's official Internet website on the Truth in Millage notice.

**Section 6** requires local governments to electronically post all revenues and all expenditures on the local government's website if one is available, or on the county government's website in a uniform format prescribed by the Department of Revenue. The reporting requirements will take effect beginning in 2009, and are phased in over three years, beginning with larger local governments. There is no prohibition against early posting of this financial information, and the information must be on the website within three months after the end of the fiscal year. Local governments must also prepare a summary report of all revenues and expenditures to be made available to the residents by mail, newspaper advertisement or in an electronic format posted on the website on the same phase in schedule described above.

**Section 7** requires counties, municipalities, school districts, water management districts, and certain special districts, by the time the Truth in Millage notice is mailed, to post the anticipated revenues, proposed budget, and tentative millage rate on their website, if one is available, or on the county government's official website. The adopted budget must also be posted in the same manner within 10 days of adoption. Finally, all county government websites must have a link to the websites of all other local governments within their jurisdiction.

**Section 8** requires counties, municipalities, school districts, water management districts, and certain special districts to post on their website, if one is available, or on the county government's official website, all contracts that are public records. The posting of the contract information will begin November 2007 with large local governments, and will be completely phased in by November 2009. Entities with a population greater than 300,000 will post contract information of \$25,000 or more; entities with a population between 50,000 and 299,999, will post contract information of \$15,000 or more; and entities less than 50,000 in population, will post contract information of \$5,000 or more.

**Section 9** provides for a study of the assessment appeals process, including value adjustment boards. The study will be completed before the next Legislative session and will include recommendations on improving this process to ensure fair and uniform treatment of taxpayers.

**Section 10** provides a \$50,000 nonrecurring appropriation from the general revenue fund to the Department of Revenue for costs incurred in assessment appeal process study.

**Section 11** provides an effective date of July 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The requirements that local governments must provide additional information to the public regarding revenues, budgets, and contracts will require additional expenditures by cities and counties. If the required expenditure is significant, cities and counties will not be bound by this law unless the Legislature finds that the law fulfills an important state interest and also provides funding or passes the legislation by a 2/3 vote.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Homestead property owners will be compensated for the expected future tax benefits of SOH in an eminent domain taking.

**C. Government Sector Impact:**

This bill has not been reviewed by the Revenue Estimating Impact Conference, but it could have a negative effect on local government revenues. Local governments will also incur expenses for the posting of certain financial and contracting information on their internet websites.

DOR is provided a \$50,000 nonrecurring appropriation from the general revenue fund for costs incurred in assessment appeal process study.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In September, 2005, the Circuit Court in Hillsborough County held that the taking of a homestead's SOH capped ad valorem assessment in a condemnation action is compensable under Florida's guarantee of full compensation. (*State v. Eugene T. Lounders, et al., No. 29-2004-CA-006624 (Fla. 13<sup>th</sup> Cir. Ct. Sep. 27, 2005)*).



## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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