

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: SPB 7026

INTRODUCER: For consideration by the Finance and Tax Committee

SUBJECT: Working Waterfront Property

DATE: January 19, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	McKee		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed bill implements section 4(j), Article VII, of the State Constitution, which provides for the classification of designated waterfront property as “working waterfront property.” The bill provides that the assessed value of such classified property must be based on current use and sets forth a methodology for calculating assessed value. The bill provides a process to apply for classification, an appeals process for denial of classification, and a penalty for failure to notify the property appraiser when the use classification changes.

According to the Revenue Estimating Conference a similar bill filed in 2009 (CS/SB 1468) would have reduced local property tax revenue by \$46.9 million on a recurring basis, beginning in FY 2010-11.

The bill creates sections 193.704, 193.7041, and 193.7042, F.S., and amends s. 195.073, F.S.

II. Present Situation:

Assessment of Property

Just Value—Art. VII, section 4 of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been 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 for the property.¹

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)

Assessed Value—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.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” assessment limitation to the Florida Constitution provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.⁴ Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.⁵ Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.⁶

Taxable Value— The taxable value of real and tangible personal property is its assessed value minus exemptions allowed by the constitution or by state law as authorized in the constitution. Major exemptions include the homestead exemption and exemptions for property used for educational, religious, or charitable purposes.

Working Waterfronts Constitutional Amendment— In November 2008, Florida’s voters approved an amendment proposed by the Florida Tax and Budget Reform Commission,⁷ to provide for the assessment of working waterfront property based on current use. The amendment to section (4), Art. VII, of the State Constitution, which was approved by 71 percent of electors voting on the issue, created a new subsection (j) to provide the categories of working waterfront property for which assessment is to be based on current use. The categories are:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

The assessment benefit provided in the amendment is subject to conditions, limitations and reasonable definitions as specified by the Legislature by general law. The amendment is to take effect upon approval by the electors and first apply to assessments for tax years beginning January 1, 2010.

² Art. VII, section 4(a) of the State Constitution.

³ Art. VII, section 4(c) of the State Constitution.

⁴ Art. VII, section 4(d) of the State Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

⁵ Art. VII, section 4(e) of the State Constitution.

⁶ Art. VII, section 4(f) of the State Constitution.

⁷ The Florida Tax and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every 10 years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment, 7 members appointed by the Speaker of the House of Representatives, 7 members appointed by the President of the Senate, and 4 non-voting ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the working waterfronts proposal as a CS for CP’s 6, 8, & 34, Second Engrossed, and the proposal was Revision 6 on the ballot of the 2008 General Election.

The Constitution authorizes the Legislature to apply conditions and limitations and reasonable definitions by general law, but the Legislature appears to be without authority to apply the assessment benefit to properties not described in the Constitution.⁸

Economic Conditions Affecting Working Waterfront Properties— According to the TBRC staff analysis, “Changes in Florida’s economy and land use may be affecting the economic viability of commercial fishing and recreational working waterfronts. Increasingly, development interests are buying traditional working waterfronts and converting the property to private and residential use. “Water-enhanced” and “water-related” activities are replacing traditional or “water-dependent” activities. This has had the effect of both decreasing the availability of waterfront property necessary to sustain commercial fishing and recreational boating activities, and increasing the value of nearby working waterfront property. This increase in property value may result in higher property taxes which may cause the working waterfronts to be less profitable, thereby compounding the pressure to convert the property to a higher-valued use.”⁹

Recreational and Commercial Working Waterfronts— Section 342.07, F.S., establishes the Legislature’s recognition that there is an important state interest in facilitating boating and other recreation access to the state’s navigable waters, and in maintaining viable water-dependent support facilities including boat hauling and repair facilities and commercial fishing facilities, as well as in maintaining the availability of public access to the navigable waters of the state. Recreational and commercial working waterfronts include water-dependent facilities such as docks, wharves, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water.

Section 342.201, F.S., governs the “Waterfronts Florida Program” at the Department of Community Affairs, designed to provide technical assistance and support to communities in revitalizing waterfront areas in the state. The program must direct efforts on the following priority concerns:

- Protecting environmental and cultural resources;
- Providing public access;
- Mitigating hazards; and
- Enhancing the viable traditional economy.

Under a competitive application process, new communities can be designated as “Waterfront Florida Partnership Communities” and receive limited financial assistance from the department to develop a community-designed vision for revitalizing the designated waterfront area.

Section 197.304, F.S., authorizes counties and cities to allow tax deferrals for recreational and commercial working waterfront property under certain conditions.

⁸ “[S]tatutes providing for an exemption from ad valorem tax are to be strictly construed, and any ambiguity is to be resolved against the taxpayer and against exemption.” *Capital City Country Club v. Tucker*, 613 So. 2d 448 (Fla. 1993)

⁹ Staff analysis TBRC Amendment 6

III. Effect of Proposed Changes:

Section 1. Creates s. 193.704, F.S., Subsection (1) of this section provides definitions for “accessible to the public,” “commercial fishing operation,” “drystack,” “land used predominantly for commercial fishing purposes,” “marina,” “marine manufacturing facility,” “marine vessel construction,” “open to the public,” “support activities,” “water-dependent,” “waterfront,” and “waters that are navigable” for purposes of classifying working waterfront property for assessment purposes.

Subsection (2) provides that pursuant to s. 4(j), Art. VII, State Constitution, and effective January 1, 2010, the following waterfront property is eligible for classification as working waterfront property:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystacks that are open to the public.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support activities.

This list mirrors the constitutional language, since the Legislature lacks authority to extend preferential tax treatment beyond what the Constitution allows.

Subsection (2) provides for the assessment of working waterfront property:

- Assessment must be based on the current use of the property.
- Assessed value must be calculated using the income approach to value if that approach is appropriate to the use of the the property, and if relevant market data are available.
- The calculation must be adjusted for the percentage of equity multiplied by the equity yield rate and the effective tax rate.
- Requirements for use of the capitalization rate to determine assessed value are provided. The rate must be calculated and updated annually.
- If data are not available, or the property is not suitable for appraisal by the income approach, the property appraiser is required to value the property in a manner which recognizes the sale price that the parcel would command in the marketplace if it were required to remain in its current working waterfront use.

Subsection (2) also creates an application process for classification as working waterfront property:

- The application must be filed with the property appraiser by March 1 of each year.
 - After the initial application is approved, reapplication may be made on a short form provided by the Department of Revenue.
- Late applications may be approved by the property appraiser if the property owner establishes that extenuating circumstances prevented timely filing of an application.
- A county may, by majority vote of the governing body, waive the requirement for annual renewal of the classification as working waterfront property.

- A new application for classification must be filed each time the property is sold or otherwise disposed of, or any time ownership changes, or if use is abandoned or discontinued.
- If use of the property as working waterfront property is abandoned or discontinued, the classification must be removed and the property must be assessed at just value pursuant to s. 193.011, F.S.
- The property owner has the responsibility for notifying the property appraiser when use or ownership of the property changes.
 - If a property owner fails to notify the property appraiser, and the property appraiser determines that the classification was improperly granted for any year within the prior 10-year period, the property owner is subject to taxes otherwise due and owing, plus 15 percent interest per year, and a 50 percent penalty of the additional taxes owed.
 - The property appraiser must record a tax lien against real property owned by a property owner who fails to notify the property appraiser when use or ownership of the classified property changes.
 - If the property owner no longer owns property in the county in which the improperly classified working waterfront property is located, the tax lien must be recorded against other properties owned by the property owner in other counties of the state.
- For property in which a portion receives a “working waterfront” use classification, the portion of the property not eligible for classification must be assessed as otherwise provided by ch. 193, F.S.
- The property appraiser must list all applications for classification of working waterfront property.
 - The list must include the acreage, the just value of the property, the value of the classified property if classification is granted or the reason classification is denied, the name of the property owner, the address of the property, and the name of any business operating on the property.

Subsection (3) provides an appeals process for denial of a working waterfront classification.

- The property appraiser must provide the property owner with a written notice denying the classification application on or before July 1 of the year in which the application was filed.
 - The notice must advise the property owner of the right to appeal the denial to the value adjustment board.
 - The property owner must file a petition with the value adjustment board requesting that classification be granted and pay a nonrefundable fee of \$15 at filing.
 - The petition must be granted if the petitioner establishes the property is qualified to receive the classification.
 - Denial of a petition may be appealed to the circuit court.
 - Property granted the classification retains the classification until the use of the property is abandoned or discontinued, or the ownership of the property changes in any way.
 - The property owner must certify each year to the property appraiser that the ownership and use of the property has not changed.

- If a county has voted to waive the notice and requirement for annual application of the classification, the county may also waive the annual certification requirement provided in this section.

Section 2. Amends s. 195.073, F.S. to add working waterfront property to the list of classifications into which property is classified for tax assessment purposes.

Section 3. Provides that the bill shall take effect upon becoming a law and shall apply to the 2010 tax roll.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The proposed committee bill implements s. 4(j), Article VII, of the State Constitution, which requires the Legislature to provide for the assessment of working waterfront property at its current use, so even though it will reduce the authority of counties and municipalities to raise revenues in the aggregate it does not fall under the mandate provisions of s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the fiscal impact of this bill, but a similar bill filed last year was estimated to reduce local property tax revenue by \$46.9 million on a recurring basis.

B. Private Sector Impact:

To the extent that specified property is eligible for classification as working waterfront property and the assessment of ad valorem taxes will be based on current use, the owners of such property may see a reduction in their ad valorem tax bills.

C. Government Sector Impact:

The proposed bill implements an amendment to the State Constitution proposed by the Florida Tax and Budget Reform Commission. The Commission did not include a fiscal impact on the effects of the proposal in the analysis of the amendment. According to the

Revenue Estimating Conference a similar bill filed last year would reduce local property tax revenue by \$46.9 million on a recurring basis, beginning in FY 2010-11.

Local governments, including school districts, will experience a reduction in ad valorem tax revenues from properties classified as working waterfront properties.

The Department of Revenue is required to prescribe by rule the notice the property appraisers will use for the owner to annually certify that the ownership and use of property classified as working waterfront property has not changed, and will need to promulgate a uniform application for classification of such property to be used statewide. Also, the department must develop a short form by rule for owners to reapply each year for classification as working waterfront property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.