

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 10-03 Working Waterfront Property

**SPONSOR(S):** Finance & Tax Council; Bogdanoff

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	15 Y, 0 N	Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill implements Article VII, section 4, and Article XII, section 30 of the Florida Constitution, and creates s. 193.704, F.S., providing guidelines to be used by property appraisers in determining the assessment of property classified as working waterfront property.

The bill provides definitions and eligibility criteria for property that may be classified as “working waterfront” for purposes of an exception from just valuation assessments. Working waterfront properties consist of: land used predominantly for commercial fishing; 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; water-dependent commercial fishing facilities; water-dependent marine vessel construction and repair facilities and their support facilities; and water-dependent facilities located in a county defined in s. 125.011(1), F.S., used for the commercial transportation of goods and people to and from foreign ports or used to provide towing, storage and salvage in support of such facilities.

The bill provides that property classified as working waterfront must be assessed on the basis of current use. The property appraiser is directed to use the income approach to valuation, with a specified capitalization rate calculation, if that approach is appropriate and adequate information is available to the property appraiser. If the income approach is not appropriate or if the information needed is not available to the property appraiser, the property appraiser is directed to value the property at its present cash value as if it were required to remain in its current use for the foreseeable future. In no event will the assessed value of the property exceed just value. The portion of any working waterfront property that is not entitled to be classified as working waterfront must be assessed separately as provided under s. 193.011, F.S.

The bill provides application procedures and provides penalties for failure to report a change in the use of property to other than as a working waterfront property.

The property appraiser is required to retain at his or her office a list by ownership of all applications for classification as working waterfront property the office has received, showing the acreage of the property; the full valuation under s. 193.011, F.S.; the value of the land under the provisions of this act; and whether or not the classification was granted.

The Revenue Estimating Conference has not considered the fiscal impact of this bill. Council staff estimates that the provisions of the constitutional amendment, as implemented by this bill, will reduce local government revenues by \$37.4 million in FY 2010-11 and by \$37.8 million in 2011-12.

The bill has an effective date of “upon becoming law,” and applies retroactively to January 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Just Valuation of Real Property

Article VII, section 4 of the Florida Constitution generally requires all property to be assessed at just value for the purposes of ad valorem taxation. Just value has been interpreted to mean fair market value.<sup>1</sup> Property appraisers determine the just value or market value of real property through the consideration of eight factors in s. 193.011, F.S. This section states that, in arriving at just valuation as required under Article VII, section 4 of the State Constitution, the property appraiser shall take into consideration the following factors:

- (1) The 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;
- (2) The 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 the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 4 (Fla. 1965)

(8) The 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 the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.<sup>2</sup>

### Exceptions to Just Valuation

Article VII, section 4 of the Florida Constitution also authorizes exceptions from the requirement that property be assessed at just value. 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>3</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>4</sup> 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.<sup>5</sup> Annual increases in assessments of certain nonhomestead properties are also limited.<sup>6</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>7</sup> Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.<sup>8</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>9</sup> The legislature may prohibit consideration of changes or improvements made to improve wind resistance and the installation of renewable energy source devices in the determination of just value.<sup>10</sup> The assessment of working waterfront properties must be based on the current use of the property.<sup>11</sup>

The Legislature may not classify property to be valued at less than just value, unless authority to do so is explicitly mentioned in the constitution.<sup>12</sup> Similarly, the Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>13</sup>

### Constitutional Amendment on Ad Valorem Taxation for Working Waterfront Property

The Florida Taxation and Budget Reform Commission (TBRC), in accordance with Article XI, section 6 of the Florida Constitution, convened, held workshops and public meetings, and ultimately proposed several constitutional amendments for the 2008 ballot for approval or rejection by Florida voters. One of the TBRC's amendments approved by the voters was Amendment 6: *Assessment of Working Waterfront Property Based upon Current Use*. Amendment 6 added a new subsection to Article VII, section 4, and created Article XII, section 30, of the Florida Constitution.

The new subsection added to Article VII, section 4, of the Florida Constitution reads as follows:

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<sup>2</sup> Section 193.011, F.S.

<sup>3</sup> Art. VII, section 4(a) of the State Constitution.

<sup>4</sup> Art. VII, section 4(c) of the State Constitution.

<sup>5</sup> 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.

<sup>6</sup> Art. VII, section 4(g) and (h) of the State Constitution provides that annual assessment changes may not exceed 10% of the prior year's assessment.

<sup>7</sup> Art. VII, section 4(b) of the State Constitution.

<sup>8</sup> Art. VII, section 4(e) of the State Constitution.

<sup>9</sup> Art. VII, section 4(f) of the State Constitution.

<sup>10</sup> Art. VII, section 4(i) of the State Constitution.

<sup>11</sup> Art. VII, section 4(j) of the State Constitution.

<sup>12</sup> See, e.g., *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989); *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So. 2d 433 (1973).

<sup>13</sup> See, e.g., *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

- (j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:
- a. Land used predominantly for commercial fishing purposes.
  - b. Land that is accessible to the public and used for vessel launches into waters that are navigable.
  - c. Marinas and drystack that are open to the public.
  - d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.
- (2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

Article XII, section 30 of the Florida Constitution provides that the assessment of working waterfront property based on current use shall first apply to assessments for tax years beginning January 1, 2010.

### **Effect of Proposed Changes**

This bill implements Article VII, section 4, and Article XII, section 30 of the Florida Constitution, and creates s. 193.704, F.S., providing guidelines to be used by property appraisers in determining the assessment of property classified as working waterfront property.

The bill provides definitions for the following terms: “accessible to the public,” “commercial fishing operation,” “drystack,” “land used predominantly for commercial fishing purposes,” “marina,” “marine manufacturing facility,” “marine vessel construction and repair facility” “open to the public,” “right-of-way,” “support facility,” “water-dependent,” “waterfront,” and “waters that are navigable.”

Pursuant to the bill, the following waterfront properties are 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 drystack that are open to the public.
- Water-dependent marine manufacturing facilities.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support activities.
- Water-dependent facilities located in a county defined in s. 125.011(1) (currently Dade County) used for the commercial transportation of goods and people to and from foreign ports, or used to provide towing, storage and salvage in support of such properties.

Property classified as working waterfront must be assessed on the basis of current use. The property appraiser is directed to use the income approach to valuation, with a specified capitalization rate calculation, if that approach is appropriate and adequate information is available to the property appraiser. If the income approach is not appropriate or if the information needed is not available to the property appraiser, the property appraiser is directed to value the property at its present cash value as if it were required to remain in its current use for the foreseeable future. In no event may the assessed value of the property exceed just value.

When a parcel of property contains both uses eligible for assessment as working waterfront property and uses that are not eligible for such assessment, those portions of the property that are not eligible must be assessed separately at just value (fair market value).

A property owner or lessee must file an application for the classification with the property appraiser on or before March 1 of each year in the county where the property is located. A short form provided by the Florida Department of Revenue may be used for classification renewals. A property owner that misses the March 1 deadline waives the classification privilege. However, the property appraiser may grant the classification upon review of a late-filed application for property that is found to be qualified to receive the classification.

A property appraiser may request a county governing body grant a waiver of the annual renewal application requirement for property classified as working waterfront within the county. A majority of the county governing body may grant and revoke such a waiver.

Whenever ownership of property that is classified as working waterfront changes, the property ceases to be used as working waterfront, or the status of the owner or lessee changes so as to change the status of the property, a new application for classification as working waterfront must be filed with the property appraiser.

A property appraiser is required to remove the working waterfront classification from a property if the classified use has been abandoned or discontinued, or the use has shifted to an unclassified use. Such property must be assessed as provided in s. 193.011, F.S.

An owner of property classified as working waterfront that is not required to file an annual application must promptly notify the property appraiser whenever the use of the property or the status or condition of the owner changes so as to necessitate a change of the classification status of the property. In the event a property owner fails to provide notice, the property appraiser is authorized to examine the use of a subject property for the prior ten years to determine if the owner was entitled to receive the benefits of the classification. For any year the property appraiser determines that the owner was not entitled to the classification, the owner is subject to taxes due (based on a just value assessment) plus 15 percent interest per annum and a penalty of 50 percent of the additional taxes owed. A property appraiser making a determination that an owner is not entitled to the classification shall record a tax lien in the county where the property is located against any property owned by the working waterfront owner. When filed, the lien attaches to any property identified in the notice of tax lien owned by the person or entity that improperly received the classification. If the person against whom the notice of tax lien is filed does not own property in the county, the property appraiser is required to record a notice of tax lien on any property the person owns in any other county or counties in the state.

The property appraiser is required to retain at his or her office a list by ownership of all applications for classification as working waterfront property the office has received, showing:

- The acreage of the property;
- The full valuation under s. 193.011, F.S.;
- The value of the land under the provisions of this act; and
- Whether or not the classification was granted.

A property appraiser is required to notify a property owner of the denial of the classification application in writing on or before July 1 of the year for which the application was filed. The written notification shall advise the applicant of his or her right to appeal to the Value Adjustment Board (VAB) and include the appeal filing deadline.

A property owner whose application for classification is denied by the property appraiser may appeal to the VAB by filing a petition on or before the 25<sup>th</sup> day following the mailing of the assessment notice by the property appraiser, and paying a \$15 filing fee. If the petitioner is entitled to receive the classification, the VAB may grant the petition and classification. A denial of the petition by the VAB may be appealed to a circuit court. Property that has received a classification from the VAB or the circuit court is entitled to receive the classification in any subsequent year until such use is abandoned or the ownership changes in any manner, as provided herein. The property appraiser is required to notify the property owner no later than January 31 or each year to certify that the ownership and the use of the property have not changed. By rule, the Department of Revenue shall prescribe the form of the notice to be used by the property appraiser. Notice and certification may also be waived by a majority vote of the county governing body.

The Department of Revenue is authorized to adopt emergency rules to administer newly-created s. 193.704, F.S.

For the 2010 calendar year, the bill provides that an application for classification as working waterfront must be filed on or before July 1, instead of on or before March 1.

The bill contains a severability clause.

Finally, the bill provides an effective date of "upon becoming law," and provides for retroactive application to January 1, 2010.

**B. SECTION DIRECTORY:**

Section 1 creates s. 193.704, F.S.

Section 2 amends s. 195.073, F.S., to add working waterfront property to the list of classifications used for tax assessment purposes.

Section 3 provides an alternative application date for 2010.

Section 4 contains a severability clause.

Section 5 authorizes the Department of Revenue to adopt emergency rules to administer s. 193.704, F.S.

Section 6 provides that the act will take effect upon becoming law and applies retroactively to January 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Department of Revenue will incur some costs to promulgate emergency rules.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference (REC) has not considered this bill. The REC has estimated that the provisions of a similar bill (SB 1408) will reduce local government revenues (including schools) by \$44.2 million in FY 2010-11 and by \$44.7 million in FY 2011-12. Based on that estimate and the differences between SB 1408 and this bill, council staff estimates that the provision of the constitutional amendment, as implemented by this bill, will reduce local government revenues by \$37.4 million in FY 2010-11 and by \$37.8 million in FY 2011-12.

2. Expenditures:

Property Appraisers may incur additional costs to administer the provisions of the bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See Part D, FISCAL COMMENTS.

**D. FISCAL COMMENTS:**

According to the TBRC's Staff Analysis and Economic Impact Statement for Real Property Assessments for Working Waterfront Parcels, dated March 26, 2008, the effect of the amendment may

result in the reduction of the property taxes on working waterfront properties, and thereby reduce pressure on these properties to convert to highest and best use.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill implements a mandatory constitutional provision; therefore, it is not a mandate.

##### 2. Other:

Article VII, Section 4 of the Florida Constitution states that, "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . ." Section 4 then continues with a number of subsections that provide for the assessment of specified types of property at less than just value.<sup>14</sup>

Florida courts have interpreted Article VII, Section 4 of the Florida Constitution to limit the ability of the legislature to create additional classifications of property that result in assessments at other than just value. For example, in one case the Supreme Court determined that a statute providing for the assessment of unsold platted land on the same basis as unplatted acreage until 60% of the lots were sold violated the constitutional provision requiring the just valuation of all property.<sup>15</sup> In another case, the Supreme Court determined that a statute providing that the property appraiser must appraise property subject to a long-term lease based on the highest and best use allowed under the lease, rather than on the unqualified highest and best use, violated the constitutional provision requiring just valuation.<sup>16</sup>

The bill contains a provision that classifies properties used for the transportation of goods and people to and from foreign ports, and other properties used to provide support to such properties, as working waterfront properties for assessment purposes. This provision may implicate Article VII, section 4 of the Florida Constitution and the court decisions interpreting the constitutional provision.

#### B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt emergency rules to administer the provisions of newly-created s. 193.704, F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>14</sup> See text accompanying footnotes 3-11 for a list of these types of properties. "Just value" has been interpreted by the courts to mean "fair market value." *Walter v. Schuler*, 176 So.2d 1348 (Fla. 1965).

<sup>15</sup> *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (1973).

<sup>16</sup> *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989).