

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – By clarifying the definitions contained in s. 193.011, F.S., specifying which factors may be used in determining just valuation, and requiring certain deed restrictions to be considered in determining just valuation, CS/HB 261 may decrease just values of currently assessed properties.

Safeguard individual liberty – The enhancement of taxpayer rights in Chapter 194, F.S., should assist individuals in contesting property appraiser assessments of the individual's real 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 may also authorize historic properties to be assessed solely on the basis of character of 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

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;⁷
- 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;⁸
- Location 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), Florida Constitution.

⁶ Article VII, §4 (e), Florida Constitution.

⁷ Fla. Stat. §193.011(1).

⁸ Fla. Stat. §193.011(2).

⁹ Fla. Stat. §193.011(3).

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

The Florida Supreme Court has held that “the appraisal of real estate is an art, not a science,”¹⁵ and “the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty.”¹⁶ 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.¹⁷

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.”¹⁸ A highest and best use analysis requires the appraiser to determine the use to which the property “can be *expected* to be put in the *immediate* future [emphasis added].”¹⁹ The Legislature has:

. . . prohibited tax assessors from considering potential uses to which the property is reasonably susceptible and to which it might be put in some future tax year, or even, during the current tax year. To be considered, the use must be *expected*, not merely potential or a ‘reasonably susceptible’ type of use; it must be expected *immediately*, not at some vague uncertain time in the future.²⁰

The explanation for this legislative policy was well stated by Judge White in his dissenting opinion in *Lanier v. Tyson*²¹ and quoted in the affirming decision of the Florida Supreme Court in *Lanier v. Overstreet*:

Assessed valuations of land based on estimates of its highest and best potential, as distinguished from present bona fide use, are bound to be largely conjectural; and when an assessor, contrary to legislative intent and direction, determines that land despite its present value has a truly higher present value because of its potential for some other ‘higher’ purpose, he indulges in unwarranted speculation and does violence to the constitutional and statutory objective of just valuation. The assessor, like the courts, should operate within the record and not *de hors* [*French for “outside”; translation added*] it.²²

¹⁰ Fla. Stat. §193.011(4).

¹¹ Fla. Stat. §193.011(5).

¹² Fla. Stat. §193.011(6).

¹³ Fla. Stat. §193.011(7).

¹⁴ Fla. Stat. §193.011(8).

¹⁵ *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).

¹⁶ *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).

¹⁷ *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 (Fla. 4 DCA 1975); *certiorari denied* 330 So.2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876)

¹⁸ Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice*, 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.

¹⁹ *Lanier v. Overstreet*, 175 So.2d 521 at 524 (Fla. 1965).

²⁰ Id.

²¹ *Lanier v. Tyson*, 147 So. 2d 365 (Fla. 2DCA 1962)

²² *Lanier v. Overstreet* at 524.

Unless a change in the highest and best use is reasonably probable within the immediate future, the present use²³ frequently represents the highest and best use of the property.²⁴

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 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.²⁵ 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.

Present Situation: Lands subject to conservation easements

Section 704.06, F.S., creates "conservation easements" which are a right or interest in specific real property in which it is appropriate to retain the land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition because these properties are suitable habitat for fish, plants, or wildlife; or retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.

Conservation easements are perpetual, undivided interests in property which may only be acquired by governmental bodies or agencies or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving sites or properties of historical, architectural, archaeological, or cultural significance. Conservation easements result in a reduction of the just valuation of the real property.

²³ 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).

²⁴ *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965).

²⁵ The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (Adopted November 16, 2002).

Present Situation: Constitutional basis for reduction in just value for conservation easements:

The reduction in assessed value experienced by the owner of a property who has conveyed a conservation easement may be derived from two separate constitutional provisions:

The state and its political subdivisions, counties, are immune from taxation, since there is no power to tax them.²⁶ A municipality can be taxed, but its property may be exempt if it meets the statutory criteria for exemption. The Florida Supreme Court held in *Maxcy, Inc. v. Federal Land Bank of Columbia*:

The principle has been more than once affirmed in this state that the Constitution must be construed as a limitation upon the power of the Legislature to provide for the exemption from taxation of any classes of property except those particularly mentioned classes specified in the organic law itself.²⁷

Thus, if the conservation easement is conveyed to an immune government, there can be no ad valorem taxation of the value of the easement so conveyed. The value of the property in the hands of its owner is reduced by the value of the easement conveyed. If a conservation easement is conveyed to a municipality and used by it for public purposes, it is exempt from taxation pursuant to Article VII, s. 3(a), Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

If the conservation easement is conveyed to a charitable corporation or trust, it is exempt from taxation as property used predominantly for educational, literary, scientific, religious, or charitable purposes. pursuant to Article VII, s. 3(a), Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of character of use pursuant to Article VII, s. 4(a). Some conservation easements permit the assessment of the underlying property on the basis of character of use, and the assessment of these lands will be reduced once the easement assuring use for only these purposes is conveyed.

Present Situation: Rights of Taxpayers in Administrative and Judicial Review of Property Taxes:

Section 194.011(3), F.S., generally requires taxpayers to file their petition contesting valuation within 25 days following the mailing of the notice by the property appraiser. No provision is made for lost or incorrectly addressed notices. Subsection (4)(a) requires the taxpayer to provide all documentation related to the valuation to the property appraiser no later than 15 days before a hearing. Subsection (4)(b) allows the taxpayer to receive a list of evidence from the property appraiser no later than 7 days before the hearing, provided that the taxpayer has provided all the information to the property appraiser and the taxpayer has requested in writing similar information.

Section 194.013, F.S., requires a filing fee and waiver of the fee is permitted for persons eligible for temporary assistance pursuant to Chapter 414, F.S.

Section 194.015, F.S., established the composition of value adjustment boards as 3 members of the county governing board and two members of the school board.

Section 194.032(2), F.S., limits taxpayers a single rescheduling of the hearing. A taxpayer is required to wait 4 hours from the scheduled time, and if the taxpayer is not heard at that time, the taxpayer is deemed to have exhausted available administrative remedies.

²⁶ Each of these Florida cases arose under a predecessor Florida Constitution. Nonetheless, they are controlling here since the principle of immunity is not constitutionally dependent. *Orlando Utilities Commission v. Milligan*, 229 So. 2d 262 (Fla. 4DCA 1969); *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571 (Fla.1957).

²⁷ *Maxcy, Inc. v. Federal Land Bank of Columbia*, 111 Fla. 116, 150 So. 248 and 151 So. 276 (1933)

Section 194.034, F.S., has no provision concerning the reimbursement of the filing fee if the taxpayer prevails.

Section 194.192, F.S., requires courts to assess all costs and requires taxpayers to pay 12 percent interest on any deficiency determined.

Section 194.301, F.S., provides a presumption of correctness on the assessment value of the property appraiser.

Effect of Proposed Changes: Present Cash Value:

This definition is clarified in two different aspects. Property appraisers are currently directed to exclude from present cash value the reasonable fees and costs of purchase. The first change made to present cash value specifically includes the costs of removal of tangible personal property as a fee or cost of purchase. In the second change to present cash value, property appraisers are directed to discount the price paid by a buyer for conditions precedent which must be satisfied before the purchase price will be tendered. The purchase price stated in the contract for sale will not be considered the present cash value if the contract for sale requires: (a) the granting of a variance from existing zoning; (b) a change in zoning; (c) relief from any existing local ordinance or regulation; (d) relief from any judicial limitation; or (e) the permitting of the intended use of the property by the state or any state agency, local or regional agency, local or regional government, or taxing authority.

Effect of Proposed Changes: Highest and Best Use:

The current statute considers the highest and best use to which the property can be expected to be put in the immediate future. A use in the immediate future is clarified to exclude a use which requires the satisfaction of any of the conditions precedent (a) through (e) found in the definition of present cash value.

Effect of Proposed Changes: Condition of the Property:

The definition is clarified to direct property appraisers to consider the individual characteristics of each property when determining physical deterioration, functional obsolescence, and external obsolescence.

Effect of Proposed Changes: Requirement that all factors be considered in determining just valuation:

CS/HB 261 requires property appraisers to disregard seven of the factors outlined in s. 193.011, F.S., in determining just valuation of income-producing property which is either residential rental property or commercial property leased to more than one legal entity, each of which conducts a separate business activity. In these instances, the property appraisers would only be permitted to consider the income generated when arriving at just valuation of these particular income-producing properties.

Effect of Proposed Changes: Assessment of Deed-Restricted Property:

Section 704.06, F.S., creates "conservation easements" which are deed restrictions which result in perpetual conservation easements to governmental entities or charitable organizations and reduce the just valuation of the property. CS/HB 261 creates s. 193.018, F.S., which provides for reduced assessment of deed restricted property used for affordable housing, multiunit commercial rental property, property used as a marina, or a property rented for use by mobile homes when the deed restriction is for a period of at least 5 years. Should the deed restriction agreement be terminated prior to its expiration, the property owner is required to pay the county the total additional taxes which would have been paid in prior years plus 12 percent interest.

Effect of Proposed Changes: Chapter 194, F.S.:

Section 194.011, F.S., is amended to include in (3) (d) a new requirement that if actual receipt of the TRIM notice is disputed, the burden of proof shall be on the property appraiser to establish receipt by clear and convincing evidence. Subsection (4)(b) is changed to require 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.

Section 194.013, F.S., includes in (2) a new requirement that the filing fee for the petition of a taxpayer who is eligible to receive one or more of the exemptions under s. 6(c), (f), or (g), Art. VII of the State Constitution be waived.

Section 194.015, F.S., (2)(a) is amended to require the three members appointed by the county commission to include one member who owns a homestead property within the county and one member who owns a business which occupies commercial space located within the county. No appointee may be either a member or an employee of any taxing authority. (2)(b) is amended to require the two members appointed by the school board to include one member who own a business which occupies commercial space located within the school district and one member eligible to receive one or more of the homestead exemptions under s. 6(c), (f), or (g), Art. VII of the State Constitution. Neither appointee may be either a member or an employee of any taxing authority.

Section 194.032, F.S., (2) is amended to permit the taxpayer to reschedule the hearing an unlimited number of times for the failure of the property appraiser to comply with the requirements of s. 194.011(4) (b). Additional rescheduling of the hearing may be granted to the taxpayer for medical reasons. The waiting time for a taxpayer to be heard is reduced from four hours to two, and the new remedy for failure to hear the taxpayer within that time is for the hearing to be rescheduled for a time reserved exclusively for the petitioner.

Section 194.034, F.S., (2) is amended to require the taxpayer's filing fee to be refunded if the determination of the property appraiser is overturned.

Section 194.192, F.S., (3) is amended to require interest to be paid to the taxpayer if the final assessment established is lower than the amount paid by the taxpayer; and if value assessed by the property appraiser exceeds the actual value by more than 10 percent, reasonable attorney fees are awarded to the taxpayer.

Section 194.301, F.S., places the burden of proof in administrative proceedings upon the property appraiser. It also provides that in judicial actions the burden of proof shall be upon the party initiating the action.

C. SECTION DIRECTORY:

Section 1 amends s. 193.011, F.S., factors to consider in deriving just valuation.

Section 2 creates s. 193.018, F.S., assessment of deed-restricted property.

Section 3 amends s. 194.011, F.S., assessment notice.

Section 4 amends s. 194.013, F.S., filing fees for petitions; disposition; waiver.

Section 5 amends s. 194.015, F.S., value adjustment board.

Section 6 amends s. 194.032, F.S., hearing purposes; timetable.

Section 7 amends s. 194.034, F.S., hearing procedures; rules.

Section 8 amends s. 194.192, F.S., costs; interest on unpaid taxes; penalty.

Section 9 amends s. 194.301, F.S., presumption of correctness.

Section 10 provides an effective date of upon becoming a law.

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.

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 clarifying the definitions used to assess property and the allowable deed-restrictions which will result in reduced valuation 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. The deed restriction provisions may also raise concerns regarding uniform rate of taxation.

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.

When deed restricted property is not limited to the use contained in the deed restrictions, the property owner is required to pay to the county additional taxes and interest. It is not clear whether this provision is meant to apply to all the various entities which levy millage.

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. On March 28, the Government Efficiency & Accountability Council adopted additional amendments and the bill was reported as a Council Substitute. This bill analysis has been modified to reflect all changes made.