

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7005 PCB GEAC 08-02 Right of Taxpayers to Challenge Governmental

Assessments

SPONSOR(S): Government Efficiency & Accountability Council and Attkisson

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Efficiency & Accountability Council, 11 Y, 0 N, Levin/Dykes, Cooper. Row 2: 1) Policy & Budget Council, Diez-Arguelles, Hansen.

SUMMARY ANALYSIS

Section 194.301, F.S., provides that in challenges to the assessment of property determined by the property appraiser, the assessment is presumed correct unless the taxpayer can overcome the presumption.

This HJR removes the government’s presumption of correctness and places the burden of proof by a preponderance of the evidence upon the government to prove that the assessment does not exceed just value. Also, the HJR provides that evidence that an assessment is based upon appraisal practices that differ from those applied to comparable property within the state are relevant in determining whether the assessment exceeds just value. Finally, the HJR provides that the taxpayer or other person contesting the assessment is entitled to reasonable attorney’s fees and costs under appropriate circumstances to be specified by general law.

The HJR requires the legislature to adopt implementing legislation with an effective date no later than January 1, 2009.

Pursuant to Article XI, section 1 of the Florida Constitution, joint resolutions must be approved by a three-fifths vote of each house of the Legislature. Article XI, section 5(e) of the Florida Constitution requires constitutional amendments to be approved by vote of at least sixty percent of the electors voting on the measure.

This joint resolution appears to have a minimal negative fiscal impact on state government related to the cost of publishing the proposed amendment as required by the state constitution.

The fiscal impact of this proposal on local governments is dependent on approval by the voters and on the legislature’s implementation of the attorney’s fee provision. As such, the impact is indeterminate. However, if the voters approve the measure and the legislature implements a meaningful attorney’s fee provision, the Revenue Estimating Conference has estimated the effect of the proposal will be to reduce the assessment of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on local government tax revenues is estimated to exceed \$324 million in FY 2009-10, increasing to at least \$1.585 billion by FY 2013-14.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – This joint resolution will provide a lower threshold for taxpayers to successfully challenge the assessment of property subject to taxation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 193.011, F.S., sets forth eight factors that the property appraiser must consider in arriving at the just value of property (fair market value) for ad valorem tax purposes. These factors are:

- (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 any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, 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
- (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.

Chapter 194, F.S., sets forth procedures for a taxpayer to challenge the assessment of property by the property appraiser. The taxpayer may either petition the Value Adjustment Board (VAB) or file a petition in circuit court. If the taxpayer is not successful before the VAB, he or she may file a petition in circuit court. The property appraiser may appeal the decision of the VAB, if certain criteria set forth in s. 194.036(1), F.S. are met.

Section 194.301, F.S., provides that in both the VAB and the courts, the assessment determined by the property appraiser is presumed correct unless the taxpayer can overcome the presumption in one of two ways:

(1) The taxpayer can show by a preponderance of the evidence that the property appraiser has failed to consider properly the criteria in s. 193.011 or that the assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. If the taxpayer shows either of these facts, the presumption of correctness is lost, and the taxpayer must prove by a preponderance of the evidence that the assessment is in excess of just value.

(2) If the taxpayer cannot make the showing described in (1), the property appraiser's assessment retains the presumption of correctness and the taxpayer must prove by clear and convincing evidence that the assessment is in excess of just value (fair market value).

Black's Law Dictionary defines clear and convincing evidence and preponderance of the evidence as follows:

Preponderance of the evidence -- The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

Clear and convincing evidence -- Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.

Effect of Proposed Changes

This HJR amends the Taxpayers' Bill of Rights contained in Article I, section 25 of the Florida Constitution to add the entitlement to a full and fair opportunity to challenge the government's assessment of the valuation of property for purposes of all taxation.

In any challenge to an assessment, the HJR removes the government's presumption of correctness and places the burden of proof by a preponderance of the evidence upon the government to prove that the assessment does not exceed just value. Also, the HJR provides that evidence that an assessment is based upon appraisal practices that differ from those applied to comparable property within the state is relevant in determining whether the assessment exceeds just value. Finally, the HJR provides that the taxpayer or other person contesting the assessment is entitled to reasonable attorney's fees and costs under appropriate circumstances to be specified by general law.

The HJR requires the legislature to adopt implementing legislation with an effective date no later than January 1, 2009.

C. SECTION DIRECTORY:

A section directory is not applicable to a Joint Resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The state constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held. The Department of State, Division of Elections, estimates that the average non-recurring cost of compliance is approximately \$60,000 in FY2007-08.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact of this proposal is dependent on approval by the voters and on the legislature's implementation of the attorney's fee provision. As such, the impact is indeterminate. However, if the voters approve the measure and the legislature implements a meaningful attorney's fee provision, the Revenue Estimating Conference has estimated the effect of the proposal will be to reduce the assessment of property subject to ad valorem taxes. At current millage rates, the impact of the lower assessments on local government tax revenues is estimated to exceed \$324 million in FY 2009-10, increasing to at least \$1.585 billion by FY 2013-14.

2. Expenditures:

If approved by the voters, property appraisers will need to prove the correctness of their assessments in valuation challenges. This may result in additional expenditures by the property appraisers to prove valuation. The HJR has not been to a Revenue Estimating Conference.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers are likely to prevail more often in challenges to valuation assessments and thereby reduce the assessed value of their property.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE) – the amount of property taxes that a school district must levy in order to participate in the Florida Education Finance Program (FEFP). The provisions of this joint resolution, if approved by the voters, will reduce the property tax base that is available for RLE. If the legislature were to set a RLE amount designed to maintain the current RLE millage rate, the RLE amount would be less than under current law by \$87 million in FY 2009-10, increasing to at least \$425 million in 2013-14.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of the Florida Constitution does not apply to Joint Resolutions.

2. Other:

Pursuant to Article XI, section 1 of the Florida Constitution, joint resolutions must be approved by a three-fifths vote of each house of the Legislature. Article XI, section 5(e) of the Florida Constitution requires constitutional amendments to be approved by vote of at least sixty percent of the electors voting on the measure.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The HJR appears to be intended to address problems with the ability of a taxpayer to challenge the assessment of property for property tax purposes. However, the language used in the HJR, particularly in new subsection (b) of Section 25 of Article 1 refers to "any tax." It is not clear what taxes, other than property taxes, are contemplated. It may be advisable to clarify the intent of the proposal.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.