

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Ad Valorem Taxation of Working Waterfront Property

SPONSOR(S): Robaina and others

TIED BILLS: IDEN./SIM. BILLS: SB 1468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee		Kliner	Reese
2) Military & Local Affairs Policy Committee			
3) General Government Policy Council			
4) Finance & Tax Council			
5)			

SUMMARY ANALYSIS

The bill implements Article VII, section 4, and Article XII, section 30, of the Florida Constitution, and creates s. 193.704, F.S., providing instruction to property appraisers assessing property value on property classified as a working waterfront.

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. The bill provides assessment guidelines for property appraisers, and provides appraisers with the authority to review up to ten years of prior use of a property that is classified as "working waterfront" under certain circumstances.

The bill provides procedures and a deadline for a property owner to submit an annual application for a working waterfront classification and outlines specific circumstances when a new application, other than the annual application, is required to be submitted to a property appraiser.

The bill provides authority to a county governing board to waive by majority vote (and to revoke a granted waiver) the annual application requirement. A property owner with an annual application waiver is required to alert the property appraiser when circumstances necessitate the filing of a new classification application. Failure to notify may subject the owner to the payment of taxes and a penalty for any year the owner was not entitled to the classification. The appraiser is authorized to review the property's use in the past ten years from the date of the failure to report. The assessment of a property that is classified as a working waterfront with coterminous support facilities shall be based upon the eligibility of the structures, pursuant to the eligibility criteria in the act.

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 bill provides notification procedures and a deadline for a denial of a property owner's classification application, and provides instruction for an administrative review of an application denial, and an appeal of the administrative review.

The bill does not appear to impact General Revenue, however, the Revenue Estimating Conference has not yet reviewed this proposal.

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

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DATE: 3/6/2009

## 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

##### **Working Waterfronts - Florida's Statutory Definition**

Florida Statutes define "recreational and commercial working waterfront" as a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, 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. Seaports are excluded from the definition.<sup>1</sup>

A decade before this definition was codified, in October, 1995, the Florida Atlantic University/Florida International University Joint Center for Environmental and Urban Problems published a report titled *A Profile of Florida's Working Waterfront*. The profile was the result of research to identify working waterfront neighborhoods in coastal communities that could benefit from a partnership with the state to accomplish the goal of revitalization.<sup>2</sup> After reviewing relevant literature and finding no commonly accepted definition, the project team concluded that developing a categorical definition of a working waterfront was not productive. Instead, the team focused on locating communities with a concentration of water-dependent uses, such as commercial fishing, ship/boat manufacture and repair, water transportation services, and marinas. The research led to four distinct types of working waterfronts in Florida: Ports, Military waterfronts, "Modern" and "Traditional" waterfronts. The term "traditional" was used to define working waterfronts that are not part of a commercial port and may represent a part of Florida's history and culture that may be threatened by urban development and market forces. The

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<sup>1</sup> Section 342.07 F.S.

<sup>2</sup> The research was supported through a grant by the Florida Department of Environmental Regulation's Florida Coastal Management Program.

term “modern” was used to denote waterfront areas characterized by tour boat charters, scuba shops, private marinas and other uses associated with water-based recreation and tourism.<sup>3</sup>

In a 2005 Interim Report on Working Waterfronts, the Florida Senate Committee on Community Affairs cited a July, 1997, report from the Florida Department of Community Affairs, finding that changes in Florida’s economy and land use were likely affecting the economic viability of commercial-fishing and recreational working waterfronts. The report stated that, increasingly, development interests are buying traditional working waterfronts and converting them to private and residential use. “Water-enhanced” and “water-related” activities are replacing traditional or “water-dependent” activities.<sup>4</sup> The report noted that the trend decreased the availability of waterfront property necessary to sustain commercial-fishing and recreational boating activities, and increased the value of nearby working waterfront property. This increase in property value typically results in higher property taxes, which may cause the working waterfronts to be decreasingly profitable, thereby compounding the pressure to convert to the “highest and best” use of the property. In Brevard County, for instance, there were 90 marinas that operated over sovereignty submerged lands in 2005. Of those, 17 had a public access requirement of 90 percent, while 23 had a public-access requirement of less than 90 percent. The remaining 50 marinas were private, with no public-access requirement whatsoever. In an effort to by-pass strict environmental regulations that make it difficult and expensive to build new marine facilities along Florida’s waterways, developers were purchasing marinas and boatyards across the state and transforming them into luxury waterfront condominiums where the slips alone have six-figure price tags.<sup>5</sup>

This trend also carried a consequence of reducing the public’s access to Florida waterways. In 2007, the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) prepared a report on some of the economic issues facing the recreational marine industry.<sup>6</sup> The report remarked that in several areas of the state, commercial and residential developments have replaced marinas and docks. This has occurred because high property values, taxes, and the costs of doing business have made it more economically advantageous for some marina owners to convert their properties or sell them to developers.

### **Just Valuation of Real Property**

Article VII, Section 4 of the Florida Constitution generally requires all real property to be assessed at just value for the purposes of ad valorem taxation. Just value has been interpreted to mean fair market value. Property appraisers determine the just value or market value of real property through the consideration of eight factors in s. 193.011, F.S. That section states:

In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

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<sup>3</sup> The research group segregated “modern” from “traditional” primarily because the modern waterfronts seemed less in need of revitalization, which was the focus of the profile.

<sup>4</sup> Senate Interim Summary Report 2005-122, dated November 2004, located at [www.flsenate.gov/data/Publications/2005/Senate/reports/interim\\_reports/pdf/2005-122ca.pdf](http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-122ca.pdf), retrieved March 6, 2009, citing “Watermarks: Technical Briefs on Coastal Waterfront Revitalization,” Volume 1, Issue 3. Department of Community Affairs, July 1997.

<sup>5</sup> Florida House of Representatives, State Resources Council analysis, HB 989, by Representative Stan Mayfield, dated April 19, 2005, on file with staff. In a three month fight over a proposal to limit, or possibly eliminate, public access to the Whitley Bay Marina, the only public access marina in Cocoa City, Florida, the state Cabinet ruled March 17, 2005, that the developer should keep 90 percent of its slips available to the public until its current lease ends, maintaining the status quo through 2008. According to the DEP, the principals did not file a request to convert the public slips to private, defaulted on the loan, and now the lender is holding the lease.

<sup>6</sup> Legislature May Wish to Consider Options for Enhancing Florida’s Recreational Marine Industry, Report No. 07-48. Found at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0748rpt.pdf>

- (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.<sup>7</sup>

### Exceptions to Just Valuation

Article VII, Section 4 of the Florida Constitution also creates exceptions from the requirement that real property be justly valued for the purposes of ad valorem taxation. One exception provides for the classification of agricultural lands by general law and for the assessment of those lands on the basis of character or use. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.<sup>8</sup>

For the assessment of agricultural lands, a property appraiser may consider only:

- (1) The quantity and size of the property;
- (2) The condition of the property;
- (3) The present market value of the property as agricultural land;
- (4) The income produced by the property;
- (5) The productivity of land in its present use;
- (6) The economic merchantability of the agricultural product; and
- (7) Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.

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<sup>7</sup> Section 193.011, F.S.

<sup>8</sup> Implemented in s. 193.461, F.S. Other exceptions include land used for conservation purposes, tangible personal property held for sale as stock in trade and livestock, homesteads (including increases in value for parental living quarters), historic property, and assessments of certain residential real property.

## Appeal of Property Appraiser Valuation

Florida Statutes provides for an administrative review of property appraisers' determinations in an appeal to the county Value Adjustment Board (VAB).<sup>9</sup> The VAB as a panel considers and renders a decision on all appeals of property assessed values, classifications and exemptions. The VAB's primary function is to hear evidence as to whether or not properties, petitioned for consideration, are assessed at the proper value and/or whether tax exemptions or agricultural classifications should be approved.

The VAB may appoint Special Magistrates who are qualified real estate appraisers, personal property appraisers, or attorneys, to conduct hearings and make recommendations to the VAB on all petitions. The primary issue for an Appraiser Special Magistrate to decide is whether or not the assessed value of the petitioned property exceeds its actual market value as of January 1 of the relevant tax year. The primary issues to be determined by Attorney Special Magistrates are whether exemptions or agricultural classifications should be granted based on the evidence presented.

If the VAB decides that it does not agree with the Property Appraiser's Office regarding the assessed value of a petitioner's property, the VAB has the authority to reduce the property's assessed value to its actual fair market value. The Property Appraiser may appeal the VAB decision by filing suit in Circuit Court if one or more of the following criteria are met:

- The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the board;
- There is a variance from the property appraiser's assessed value in excess of the following:
  - 15 percent variance from any assessment of \$50,000 or less;
  - 10 percent variance from any assessment in excess of \$50,000, but not in excess of \$500,000;
  - 7.5 percent variance from any assessment in excess of \$500,000, but not in excess of \$1 million; or
  - 5 percent variance from any assessment in excess of \$1 million; or
- There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions.<sup>10</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 amendments approved by the voting public was Amendment 6: Assessment of Working Waterfront Property Based upon Current Use, which amended Section 4 of Article VII; and provided a new section in Article XII of the Florida Constitution. Article VII, section 4, provides as follows:

Article VII, Section 4 of the Florida Constitution provides, by general law, regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

- (a)...
- (b)...

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<sup>9</sup> Sections 194.011 through 194.037, F.S.

<sup>10</sup> Section 194.036, F.S.

- (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 drystackes 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, Florida Constitution, provides 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**

The bill implements Article VII, section 4, and Article XII, section 30, of the Florida Constitution, and creates s. 193.704, F.S., providing instruction to property appraisers assessing property value on property classified as a working waterfront.

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; support facility; water-dependent; waterfront; and waters that are navigable. Because the “working waterfront” classification is limited only to “waterfront property” the term “waterfront” is defined as “property that is on, over, or abutting waters that are navigable.”

Pursuant to the bill, the following waterfront property is eligible for classification as working waterfront 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 drystackes that are open to the public.
- d. Water-dependent marine manufacturing facilities,
- e. Water-dependent commercial fishing facilities, and
- f. Water-dependent marine vessel construction and repair facilities and their support activities.

Property classified as working waterfront shall be assessed on the basis of current use. Assessed value must be calculated using the income approach to value<sup>11</sup> and using a capitalization rate based upon a debt coverage ratio formula that must be calculated and updated annually. The formula is as follows:

Capitalization Rate = (Debt Coverage Ratio) x (Mortgage Capitalization Rate) x (Loan to Value Ratio - for comparable properties in the area).

A property owner 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

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<sup>11</sup> The guide for calculating income approach to value is The Appraisal of Real Estate, Thirteenth Edition, published by the Appraisal Institute. <http://www.appraisalinstitute.org/> Property appraisers are required to use data from lenders regarding industry-wide loan interest rates, loan to value ratios, amortization terms, payment periods, debt coverage ratio requirements, market rental rates, market expense rates, and market vacancy rates.

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 property that is classified as working waterfront is the subject of a transaction that results in a change of property ownership, or if the property ceases to be used as working waterfront, or if the status of the owner 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 its classified use has been abandoned or discontinued, or if its use has shifted to an unclassified use. The property stripped of the classification shall 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 owner was not entitled to the classification, the owner is subject to taxes due (based on a just value determination) 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.

When property is classified as working waterfront and there is a structure or a facility under the same ownership that is not eligible to be classified as working waterfront property, the portion or the property that consists of the ineligible structure or facility shall be separately assessed as provided in s. 193.011, F.S.

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 and include the appeal filing deadline.

A property owner whose application for classification is denied by the property appraiser may appeal to the value adjustment board 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 value adjustment board may grant the petition and classification. A denial of the petition by the value adjustment board may be appealed to circuit court. Property that has received a classification from the value adjustment board 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 has not changed. The Department of Revenue shall prescribe by rule 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.

**B. SECTION DIRECTORY:**

**Section 1** creates s. 193.704, F.S., providing definitions, classification criteria and eligibility, tax assessment criteria, and procedures for: applying for classification; forfeiture of classification; notification of denial of application; administrative review; and appeals.

**Section 2** provides an effective date of October 1, 2009.

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

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

1. Revenues: See Part D. FISCAL COMMENTS

2. Expenditures: See Part D. FISCAL COMMENTS

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

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

2. Expenditures: See Part D. FISCAL COMMENTS

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

See Part D. FISCAL COMMENTS

**D. FISCAL COMMENTS:**

According to the Staff Analysis and Economic Impact Statement of the Taxation and Budget Reform Commission, 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. Local governments may increase millage rates on all properties to offset revenue shortfalls.

Staff anticipates a review and analysis by the Revenue Estimating Conference at a later date.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

It appears the bill will reduce the authority of counties and municipalities to raise revenues in the aggregate and may fall under the mandate provisions of s. 18, Art. VII, State Constitution. The Revenue Estimating Conference has not reviewed the bill to determine if the impact would be significant and require a two-thirds vote of the membership of each house of the Legislature for approval, or if the impact would be insignificant and fall under an exemption from a two-thirds vote.

##### 2. Other:

None noted.

#### B. RULE-MAKING AUTHORITY:

The Department of Revenue is required to prescribe by rule the form of the notice to be used by the property appraiser.

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

Some definitions may need additional consideration. For instance, the definition for “accessible to the public” has the phrase “open to the public” in the definition. There is a definition for “open to the public” in the bill that, when read together, creates a conflict.

In addition, the definitions for “drystack” and “marina” exclude facilities in which vessel storage or moorage “ is limited to persons purchasing, receiving, or renting a storage space as a condition of homeownership or tenancy.” While this language appears to target facilities where 100% of storage or moorage is private, many facilities are required to offer a percentage of moorings to the general public as a condition of their sovereignty submerged lands lease with the state.

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