

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 Community Affairs Committee

BILL: SB 1408

INTRODUCER: Finance and Tax Committee

SUBJECT: Working Waterfront Property

DATE: April 7, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/1 amendment
2.			FT	
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This 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 an application and appeals process for working waterfront classification, and penalties for failure to notify the property appraiser upon a change in use or ownership of the property.

The bill creates sections 193.704, 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. Under Florida law, “just valuation” is synonymous with “fair market value”, and is defined as what a willing buyer would pay a willing seller for the

property in an arm's length transaction.¹ Section 193.011, F.S., outlines the factors that property appraisers must consider to determine the just value of real property.

Assessed Value – The Florida Constitution authorizes certain alternatives to the just valuation standard for special classes of property.² Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.³ Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.⁴ The "Save Our Homes" provision limits the amount a homestead's assessed value can increase annually to the lesser of 3 percent or the consumer price index.⁵ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.⁶ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.⁷

Taxable Value – The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.⁸

Working Waterfronts Constitutional Amendment

In November 2008, Florida voters approved a constitutional amendment proposed by the Florida Tax and Budget Reform Commission (TBRC),⁹ to provide for the assessment of working waterfront property based on current use.¹⁰ The amendment to section (4), Art. VII, of the State Constitution, 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.

¹ Section 193.011, F.S. *See also* *Walter v. Shuler*, 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 These exceptions are implemented in Part II of ch. 193, F.S.

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

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

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

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

⁷ Art. VII, section 4(f) of the State Constitution.

⁸ Art. VII, sections 3 and 6 of the State Constitution. *See also* ch.196, F.S.

⁹ 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 ten years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment. The Commission is composed of seven members appointed by the Speaker of the House of Representatives, seven members appointed by the President of the Senate, and four 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.

¹⁰ This amendment was approved by 71 percent of Florida electors voting on the issue.

- Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.¹¹

The assessment benefit provided in the amendment is subject to conditions, limitations and reasonable definitions as specified by the Legislature through general law. However, the Legislature appears to be without authority to apply the assessment benefit to properties that are not described in the Constitution.¹²

Economic Conditions Affecting Working Waterfront Properties

According to the 2008 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 results 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.]¹³

Recreational and Commercial Working Waterfronts

Section 342.07, F.S., establishes the Legislature's recognition that there is an important state interest in maintaining water-dependent commercial activities and public access to the navigable waters of the state. These water-dependent support activities include those that are open to the public, 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.¹⁴

The "Waterfronts Florida Program" in s. 342.201, F.S., is governed by the Department of Community Affairs and designed to provide technical assistance, support, training, and financial assistance for waterfront communities to revitalize waterfront areas in the state. Section 342.201(3), F.S., requires the Program to focus on the following priority concerns:

- Protecting environmental and cultural resources;
- Providing public access;

¹¹ Art. VII, Section 4(j) of the State Constitution.

¹² Statutes 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. See *Capital City Country Club v. Tucker*, 613 So.2d 448 (Fla.1993) ("... [I]t is well settled that all property is subject to taxation unless expressly exempt, and exemptions are strictly construed against the party claiming them.")

¹³ Taxation and Budget Reform Commission (TBRC), *Staff analysis Amendment 6* (March 26, 2008) (on file with the Senate Committee on Community Affairs).

¹⁴ Section 342.07(2), F.S.

- Mitigating hazards; and
- Enhancing the viable traditional economy.¹⁵

New communities can undergo a competitive application process to be designated as “Waterfront Florida Partnership Communities” under the Program and receive limited financial assistance from the department to develop a community-designed vision for revitalizing the designated waterfront area.¹⁶

The “Stan Mayfield Working Waterfronts Program”, located in s. 380.5105, F.S., was enacted by the Legislature in 2008 through chapter 2008-229, Laws of Florida, to become a part of the Florida Communities Trust within the Department of Community Affairs. This program is a competitive grant program that provides full acquisition or less-than-fee acquisition for working waterfront properties based on weighted criteria developed by joint rules from the trust and the Department of Agricultural and Consumer Services. These weighted criteria give increased priority to projects:

- Within a municipality or area under intense growth and developmental pressures, as evidenced by a number of factors, including a determination that the municipality’s growth rate exceeds the average growth rate for the state;
- Within the boundary of a community redevelopment agency established pursuant to s. 163.356, F.S.;
- Adjacent to state-owned submerged lands designated as an aquatic preserve identified in s. 258.39; or
- That provide a demonstrable benefit to the local economy.¹⁷

This program receives \$7.5 million annually from the Florida Forever Program.¹⁸

Section 197.304, F.S., also allows counties and cities to grant tax deferrals for recreational and commercial working waterfront property under certain statutory conditions.

III. Effect of Proposed Changes:

Section 1 creates s. 193.704, F.S. Subsection (1) of this section recognizes the importance of Florida’s traditional working waterfront properties to the state’s heritage and economic vitality, and that the conversion of working waterfronts to exclusively private uses limits public access to the state’s waterways and may cause an increase in property taxes to nearby working waterfronts when they are assessed at their highest and best use. This section also provides Legislative intent that working waterfront property, including water-dependent commercial transportation facilities

¹⁵ Section 342.201(3), F.S.

¹⁶ “The Program generally designates communities every two years”... so far 23 communities have been selected for the Waterfronts Florida Program since it started in 1997, including the recently designated communities of Fort Myers and Millville-Bay County. See Press Release, *Two Communities Selected for Waterfronts Florida Program* (July 6, 2009) (on file with the Senate Committee on Community Affairs).

¹⁷ Section 380.5105(2), F.S.

¹⁸ Comm. on Finance and Tax, Fla. Senate, *Assessment of Working Waterfront Property- Implementation of Constitutional Amendment Approved in November 2008*, 2 (Interim Project Report 2010-115) (Oct. 2009).

and their water-dependent support facilities, shall be assessed at the property's current use as provided by section 4(j), Art. VII of the State Constitution.

Subsection (2) of this section provides definitions for "accessible to the public," "commercial fishing facility," "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" for purposes of granting a working waterfront property classification for property assessments.

Subsection (3)(a) provides that pursuant to s. 4(j), Art. VII, State Constitution, and effective January 1, 2010, 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 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.
- Water-dependent facilities used for the commercial transportation of goods and people.
- Water-dependent facilities used for activities that support the commercial transportation of goods and people.
 - These activities include, but are not limited to, towing, storage, and salvage.

Subsection (3)(b) mandates that working waterfront property be assessed based on the current use of the property. Providing the following methodology to calculate the current use value of the property:

- Assessed value must be calculated using the income approach to value if that approach is appropriate to the property and adequate local market rental rates, expense rates, and vacancy rates are available.
- The appraiser shall use a capitalization rate based upon the debt coverage ratio formula, adjusted for the effective tax rate and the percentage of equity multiplied by the equity yield rate.
- The capitalization rate must be calculated and updated annually and shall be based on local data.

If these conditions are not satisfied, the property appraiser shall value the property at its present cash value as if it were required to remain in its current working waterfront use. In no event, shall the assessed value of the property exceed just value.

Subsection (3)(c) 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 in the county where the property is located.
 - The property appraiser may require the applicant to furnish information to establish that the property is actually be used as required under this section.
 - After the initial application is approved, reapplication may be made on a short form provided by the Department of Revenue.
- Failure to apply by March 1 shall constitute as a one year waiver; however, late applications may be approved by the property appraiser if a property owner who is qualified to receive the classification files an application on or before the 25th day following the mailing of proposed property taxes and establishes that extenuating circumstances prevented timely filing of an application.
- A new application for classification must be filed each time the property is sold or otherwise disposed of, any time ownership changes, whenever the owner or lessee ceases to use the property as a working waterfront property.
 - A county may, by majority vote of the governing body, waive the requirement for annual renewal of the classification as working waterfront property.
- 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.
 - This penalty may be waived if the owner or lessee demonstrates that he or she reasonably tried to notify the property appraiser of the change in use, status, or condition of the property.
 - The property appraiser must record a tax lien against any real property owned by the working waterfront 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 valuation under s. 193.011, F.S., the value of the land under the provisions of this subsection, and whether the classification was granted.

Subsection (4) provides an appeals process for denial of a working waterfront classification:

- The property appraiser must notify the property owner in writing of a denial of a 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 denied property owner may file a petition with the value adjustment board requesting that classification be granted and pay a nonrefundable fee of \$15 at filing.
 - The value adjustment board may grant the petition if the petitioner establishes the property is qualified to receive the classification and demonstrate particular extenuating circumstances that warrant granting the classification.
 - Denial of a petition by the value adjustment board may be appealed to a court of competent jurisdiction.
 - Property granted the classification shall retain the classification until the use of the property is abandoned or discontinued, or the use or ownership of the property changes in any way.
 - The property appraiser shall notify classified property owners no later than January 1 of each year requiring such property owners to certify that the ownership and use of the property has not changed. The form of notice shall be prescribed by department rule.
 - If a county has voted to waive the requirement for an annual application or short form be filed for classification, then the county may also waive the annual certification requirement provided in this section by a majority vote of its governing body.

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

Section 3 states that the invalidity of any provision of this act or the application thereof, shall not affect the other provisions or applications provided in this act.

Section 4 provides that the bill shall take effect upon becoming a law and shall apply retroactively to January 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This 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.

D. Other Constitutional Issues:

This bill adds additional water-dependent facilities that were not specifically named in the constitutional amendment, to be classified as working waterfront property.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Government Sector Impact.

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:

According to the Revenue Estimating Conference, the proposed fiscal governmental impact is as follows:¹⁹

All Funds	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
High	\$50.1 m		\$50.6 m	\$52.8 m	\$55.5 m
Middle	\$44.2 m		\$44.7 m	\$46.6 m	\$49.0 m
Low	\$38.4 m		\$38.8 m	\$40.5 m	\$42.5 m

Adopting the middle estimate on March 5, 2010, the Revenue Estimating Conference presented the following consensus estimate based on the current millage rates:

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
School Tax	\$19.2 m	\$19.2 m	\$ 19.4 m	\$ 20.3 m	\$ 21.3 m
Non-School Tax	\$25.0 m	\$25.0 m	\$25.3 m	\$26.3 m	\$27.7 m
Total Impact	\$44.2 m	\$44.2 m	\$44.7 m	\$46.6 m	\$49.0 m

¹⁹ Revenue Estimating Conference, *Implementation of Working Waterfronts Constitutional Amendment, CS/SB 346, SB 1408, and HB 73*. (March 5, 2010)(on file with the Senate Committee on Community Affairs).

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 form of 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. The Department of Revenue must also develop a short form by rule for owners to reapply each year for classification as working waterfront property.

Since the value of these properties will no longer be determined using the traditional method of comparing sales data, the Department of Revenue states that it will need additional appraisal staff for the Classified Use Section who will also need to undergo additional training.²⁰ In a similar analysis to SB 346, the departments estimated that each Senior Appraiser position will cost \$2,500 for training and certification.²¹

The Department of Revenue estimates that this bill will generate \$211,548 in recurring expenditures and \$11,631 in non-recurring expenses for the FY 2009-10.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue has raised the following issues and recommendations in response to SB 1408:

- In addressing the income valuation approach beginning on line 138, the bill requires the Department and property appraisers to determine whether the income approach is *appropriate* for valuing the property, but does not provide specific criteria to determine this appropriateness.
- This section also states that “the assessed value shall be calculated using the income approach to value, using a capitalization rate based on a debt coverage ratio formula *adjusted for the effective tax rate and the percentage of equity multiplied by the equity yield rate.*”
 - The term “adjusted” needs to be clarified to state whether it means to add, subtract, multiply, or divide; and state which mathematical method applies to each statement. There is no accepted methodology that involves “adjusting” a cap rate.
 - The phrase “capitalization rate based on a debt coverage ratio formula” should include the term “overall”.

²⁰ Department of Revenue, *Senate Bill 1408 Fiscal Analysis* (Feb. 14, 2010) (on file with the Senate Committee on Community Affairs).

²¹ Department of Revenue, *Senate Bill 346 Fiscal Analysis* (January 8, 2010) (on file with the Senate Committee on Community Affairs).

²² Department of Revenue, *Senate Bill 1408 Fiscal Analysis* (Feb. 19, 2010) (on file with the Senate Committee on Community Affairs).

- Lines 242-246 of the bill provides for mixed-use property, stating that the portion that is not eligible for classification must be assessed as otherwise provided by ch. 193, F.S. The department states that the determination of the portion eligible for classification and the apportionment of income attributable to the working waterfront, may present difficulties in department oversight.
- The bill provides that property appraisers may obtain capitalization data from the Department, which does not currently have a collection program for these data, which would be difficult to research.
- The effective date of the bill should be changed to January 1, 2011.²³

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:

Barcode 918770 by Community Affairs on April 7, 2010:

This strike-all amendment:

- Does not include the phrase “with no automatic renewal rights or conditions”, in the definitions for “drystack” and “marina” in order to address the concerns of marina industry;
- Includes a definition for “repair” and “right-of-way”;
- Clarifies the definition of “water-dependent” by specifying that it applies to an activity performed *in a facility*, since the constitution refers to water-dependent facilities;
- Clarifies the definition of “waterfront,” allowing property that is separated from the water by a public right-of-way to be considered waterfront if the parcels are under common ownership and are part of the same business enterprise and the separated parcel has direct access to the water across the right-of-way;
- Changes the definition of “waters that are navigable” to remove references to interstate waterway and ebb and flow of the tide;
- Modifies the assessment methodology, addressing issues raised by DOR and property appraisers. The methodology contains a formula, to be used if certain information is available and criteria are met, plus instructions for the property appraiser if the formula cannot be used;
- Allows a later application deadline for working waterfront classification for 2010; and
- Gives DOR emergency rulemaking authority.

This amendment also provides new criteria and program objectives for the Stan Mayfield Working Waterfronts, Florida Forever Program under s. 380.5105 (2), F.S.

²³ *Id.*

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
