



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CS/CP 4

REFERENCE:

ACTION:

Sponsor: Governmental Procedures and
Structure Committee and
Commissioner Margolis

1. GPSC
2. FTC
- 3.

Favorable/CS
Pre-meeting

Subject: Residential property
assessment/storm hardening
or renewable energy devices

Date: January 9, 2008

I. Summary:

This proposed constitutional amendment provides that the Legislature may prohibit the consideration of storm-hardening improvements and the installation of renewable energy source devices in the determination of the assessed value of residential real property.

II. Present Situation:

Just Valuation of Property

Article VII, s. 4 of the Florida Constitution requires all property, with some exceptions, to be assessed at a just valuation for the purposes of ad valorem taxation.¹ "The term 'just valuation' means 'fair market value.'"²

¹ Article VII, s. 4, Fla. Const., states:

Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

To determine the just value or fair market value of a property, property appraisers must consider the eight factors set forth in s. 193.011, F.S. That statute states:

Factors to consider in deriving just valuation.—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:

(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

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

² *Gilreath v. Westgate Datona, Ltd.*, 871 So. 2d 96, 967 (Fla. 5th DCA 2004) (quoting *Mazourek v. Wal-Mart Stores, Inc.*, 831 So. 2d 85, 88 (Fla. 2002)).

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.

The installation of a renewable energy device or improvements for the purpose of improving a property's resistance to wind damage may increase a property's market value. By operation of Art. VII, s. 4, Fla. Const., and s. 193.011, F.S., assessed values generally should increase due to increased market values.

Assessment of Renewable Energy Source Devices

Article VII, s. 3(d), Fla. Const., authorizes a limited exemption from ad valorem taxation for renewable energy source devices. That constitutional provision states:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

The Legislature implemented the exemption for renewable energy source devices through s. 196.175, F.S., which states:

Renewable energy source exemption.—

(1) Improved real property upon which a renewable energy source device is installed and operated shall be entitled to an exemption not greater than the lesser of:

(a) The assessed value of such real property less any other exemptions applicable under this chapter;

(b) The original cost of the device, including the installation cost thereof, but excluding the cost of replacing previously existing property removed or improved in the course of such installation; or

(c) Eight percent of the assessed value of such property immediately following installation.

(2) The exempt amount authorized under subsection (1) shall apply in full if the device was installed and operative throughout the 12-month period preceding January 1 of the year of application for this exemption. If the device was operative for a portion of that period, the exempt amount authorized under this section shall be reduced proportionally.

(3) It shall be the responsibility of the applicant for an exemption pursuant to this section to demonstrate affirmatively to the satisfaction of the property appraiser that he or she meets the requirements for exemption under this section and that the original cost pursuant to paragraph (1)(b) and the period for which the device was operative, as indicated on the exemption application, are correct.

(4) No exemption authorized pursuant to this section shall be granted for a period of more than 10 years. *No exemption shall be granted with respect to renewable energy source devices installed before January 1, 1980, or after December 31, 1990.* (Emphasis added).

As a result of s. 196.175(4), F.S., the renewable energy source property tax exemption authorized by Art. VII, s. 3(d), F.S., is no longer operative.

Florida's Property Tax

In 2006, Florida's local property tax system assessed:

more than 9 million parcels of real property [with] a just value of \$2.4 trillion. Due to various statutory exemptions and exclusions, such as Save Our Homes, property tax relief for low-income seniors and disabled veterans, and the exclusion of government property, the taxable value of Florida's real property in 2006 was \$1.79 trillion, resulting in more than \$30.4 billion in property taxes levied by local governments and taxing authorities.³

III. Effect of Proposed Changes:

This proposed amendment to the Florida Constitution creates an exception to Art. VII, s. 4, which requires all property to be assessed for ad valorem taxation at fair market value.

Under the amendment, the Legislature may prohibit the consideration of storm-hardening improvements and the installation of renewable energy source devices in the determination of the assessed value of residential real property.

³ Florida Department of Revenue, *Property Tax Oversight Program's Role*, http://dor.myflorida.com/dor/property/about_us.html (last visited Nov. 27, 2007).

The amount of the benefit under the amendment may equal the increased market value resulting from storm-hardening improvements or the installation of a renewable energy source device. Qualifying storm-hardening improvements include “any change, addition, or improvement made for the purpose of improving [a residential] property’s resistance to wind damage.”

The benefits available under the amendment do not appear to be limited to homestead property. Instead, the benefit appears to apply more broadly to all “property used for residential purposes.” As such, the benefit appears to apply to rental apartments, second or vacation homes, as well as homesteads.

The amendment appears to apply to residential properties that are retrofitted with improvements, rather than new construction.

The existing authority for a property tax exemption for renewable energy source devices in Art. VII, s. 3(d), Fla. Const., is not operative. However, if the exemption becomes operative, it may conflict with the benefits under this measure or create a double benefit. Moreover, if the installation of a renewable energy source device increases the value of the real property more than the cost of the device, the benefit of this measure is likely greater than the potential benefit under Art. VII, s. 3(d), Fla. Const. To avoid confusion the Commission may wish to repeal Art. VII, s. 3(d), Fla. Const.

IV. Constitutional Issues:

A. Constitutional or Legislative Matter:

This proposed amendment to the Florida Constitution creates an exception to Art. VII, s. 4, which requires all property to be assessed for ad valorem taxation at fair market value. As such, the purposes of the amendment can be accomplished only through a constitutional amendment.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This proposed constitutional amendment provides that the Legislature may prohibit the consideration of storm-hardening improvements and the installation of renewable energy source devices in the determination of the assessed value of residential real property.

The Legislature's Office of Economic and Demographic Research has estimated that this measure, if implemented, will have the following fiscal impact:

	YR 1	YR 2	YR 3
<i>Storm-Hardening Improvements</i>			
Number of Homeowners	225,370	229,384	233,808
Ad Valorem Tax Loss (millions)	\$ (3.39)	\$ (3.45)	\$ (3.52)
<i>Renewable Energy Devices</i>			
Ad Valorem Tax Loss (millions)	\$ (0.05)	\$ (0.35)	\$ (0.70)
<u>Total Tax Impact (millions)</u>	<u>\$ (3.44)</u>	<u>\$ (3.80)</u>	<u>\$ (4.22)</u>

B. Private Sector Impact:

This measure may create an incentive for an owner of residential property to strengthen the property to resist wind damage or to install a renewable energy source device. Storm-hardening improvements may result in lower insurance rates. The installation of renewable energy source devices may result in lower energy costs.

C. Government Sector Impact:

This measure will prohibit increased assessed values of residential property for ad valorem taxation as the result of storm-hardening improvements or the installation of a renewable energy source device. Without changes in millage rates, the amendment likely will reduce ad valorem revenues that would have otherwise been due.

VI. Technical Deficiencies:

The amendment adopted by the Governmental Procedures and Structure Committee at its December 14, 2007, meeting contained a drafting error. To correct the error, CP 4 should be amended to show subsection (d) of section 3 of Article VII of the Florida Constitution stricken. That subsection pertains to the existing renewable energy source property tax exemption. Existing subsection (e) of section 3 of Article VII of the Florida Constitution should be redesignated as subsection (d).

VII. Related Issues:

The existing authority for a property tax exemption for renewable energy source devices in Art. VII, s. 3(d), Fla. Const., is not operative. However, if the exemption becomes operative, it may conflict with the benefits under this measure or create a double benefit. Moreover, if the installation of a renewable energy source device increases the value of the real property more than the cost of the device, the benefit of this measure is likely greater than the potential benefit under Art. VII, s. 3(d), Fla. Const. To avoid confusion the Commission may wish to repeal Art. VII, s. 3(d), Fla. Const.