



## TAXATION AND BUDGET REFORM COMMISSION

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### Staff Analysis and Economic Impact Statement

Measure:	SR 13, First Engrossed	REFERENCE:	ACTION:
Sponsor:	Finance and Tax Committee	1. FTC	Favorable
		2. TBRC	Fav/Engrossed
Subject:	Just Valuation of Property	3. Style/Drafting	Pre-meeting
Date:	March 17, 2008		

#### I. Summary:

This measure revises the factors that a property appraiser must consider in deriving just valuation of real and tangible property. The revised factors require a property appraiser to consider the legally permissible use of property, zoning changes, concurrency requirements, permits necessary to achieve the highest and best use of property, and physical deterioration and functional obsolescence of property.

Additionally, the measure provides that property appraisers have the burden to prove that they complied with the assessment criteria in assessment challenges. Taxpayers challenging an assessment can overturn an assessment based on a preponderance of the evidence that the assessment exceeds just value. The measure provides that property appraisers have the burden to prove that the denial of an exemption or an assessment classification complies with the law.

#### II. Present Situation:

##### *Criteria to Determine Just Value of Real Property*

Section 193.011, F.S., was first adopted in 1963 and was originally known as the "just value law." It was adopted to assist tax assessors, now known as property appraisers, to apply the normal criteria used by professional appraisers to make market value evaluations. The 1963 Legislature recognized that the constitutional requirement of "just valuation" mandated all property to be assessed at its full market value. The list of seven original criteria was simply an enumeration of the factors required in a professional appraisal.

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., which 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 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>1</sup>

The second factor or criteria originally stated in 1963:

- (2) The highest and best use which the property can be expected to be put in the immediate future; and the present use of the property.

The qualifying language which has been added by numerous legislative enactments since has been designed to require property appraisers to recognize the various regulatory and judicial restraints on the use of property.

Highest and best use is an appraisal concept which is inherent in establishing the fair market value of real estate. The formal definition adopted by the Appraisal Institute<sup>2</sup> is:

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<sup>1</sup> Section 193.011, Florida Statutes.

<sup>2</sup> Appraisal Institute, *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, <http://www.appraisalinstitute.org/> (last visited January 31, 2008).

Highest and best use is the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.

The application of this definition, however, will vary somewhat, depending on the purpose of the appraisal. The Florida statute, and similar limitations in most other states, would not permit a presumption of a zoning change, but would require an appraisal based on the existing zone. Section 192.001, F.S., provides the definitions for real property and tangible personal property as follows:

“Real property” means land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably.<sup>3</sup>

“Tangible personal property” means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

“Construction work in progress” consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition.<sup>4</sup>

The application of the concept of highest and best use is inherent in determining any given property’s “just value.” The case of *Bystrom v. Valencia Center*<sup>5</sup> involved the acknowledged “underutilization” of a block in downtown Coral Gables which was zoned for mid-rise office buildings. The property was used as a neighborhood strip center, anchored by a Publix grocery store. The facts in the case acknowledged that the property was not at its highest and best use. The Dade County Property Appraiser (Bystrom) had assessed the land as if it were under a mid-rise office building, and assigned a nominal value to the improvements constituting the strip center. The facts also acknowledged any lower valuation would be less than just value because the property would not be assessed at its highest and best use. A long-term lease to Publix prevented the property from being used at its highest and best use. Attempts by the legislature to allow for an assessment at less than just value when the property was encumbered by a sub-market lease were stricken down in the subsequent *Valencia Center* cases.

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<sup>3</sup> Section 192.001, F.S.

<sup>4</sup> Section 192.001, F.S.

<sup>5</sup> *Bystrom v. Valencia Center*, 432 So. 2d 108 (Fla. 3d DCA).

***Burden of Proof in Assessment Challenges***

During a taxpayer's challenge to a property appraiser's assessment, the appraiser's assessment is presumed correct or has a presumption of correctness. This presumption of correctness has its roots in case law dating back to 1929.<sup>6</sup> Until 1997, one challenging an assessment had to "affirmatively overcome [the presumption of correctness] by appropriate and sufficient allegations and proofs excluding every reasonable hypothesis of a legal assessment."<sup>7</sup>

The "every reasonable hypothesis" burden of proof is unique to Florida. While most other states afford the local property appraiser's assessment a presumption of correctness, the taxpayer's burden in overcoming the presumption is generally less onerous. In fact, [a 1996] study identified eighteen states in which the taxpayer's burden of proof is a "preponderance of the evidence" or lower.<sup>8</sup>

The presumption [of correctness] is a recognition of "the difficulty of fixing with certainty the full cash value of the property and the great variance in values set by persons of like experience and judgment, all making estimates conscientiously," [*Schleman v. Connecticut General Life Insurance Company*, 151 Fla. 96, 104, 9 So. 2d 197, 200 (1942)]. By placing upon a challenger to the property appraiser's assessment the burden of overcoming the assessment by proof which excludes every reasonable hypothesis of a legal assessment, we effectively deter litigation over minor disagreements in valuation and keep the courts out of the business of property valuation where the appraiser has conscientiously done his job as prescribed by Section 193.011.<sup>9</sup>

In 1996, the Legislature found that the presumption of correctness:

- Is necessary and appropriate for the administration of the property tax;
- Deprives taxpayers of a meaningful remedy to incorrect assessments under the pre-1997 burden of proof;
- Was judicially created and never ratified by the Legislature; and
- Is arguably conclusive.<sup>10</sup>

As a result, the 1996 Legislature passed HB 557 to:

- Provide that the property appraiser's assessment is presumed correct if the appraiser has complied with the law and recognized professional standards of appraisal practice; and

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<sup>6</sup> *Folsom v. Bank of Greenwood*, 120 So. 317 (1929).

<sup>7</sup> *Id.* at 430.

<sup>8</sup> Kent Wetherell, 25 FLA. ST. U. L. REV. 185, 199 (1998) (footnotes omitted).

<sup>9</sup> *Bystrom v. Equitable Life Assur. Soc. of U.S.*, 416 So. 2d 1133 (Fla. 3d DCA 1982).

<sup>10</sup> Preamble to House Bill 557 (1996).

- Provide that a taxpayer may overcome the presumption of correctness by a preponderance of the evidence, rather than by presenting proof that excludes every reasonable hypothesis of a legal assessment.

Governor Chiles vetoed HB 557 (1996) stating that “the bill may create as many inequities as it attempts to correct and will seriously affect local government revenues at the same time if in fact the assessments fall in amount of value. . . Estimates of the potential losses to local governments from this bill range from \$70 million to over \$480 million . . .”<sup>11</sup>

Simultaneously with the veto of HB 557 (1996), Governor Chiles created the Ad Valorem Task Force by executive order to study issues relating to ad valorem taxation including the burden of proof.<sup>12</sup> As a result of the study, the Ad Valorem Task Force recommended the text of existing s. 194.301, F.S., which was adopted by the Legislature in 1997.

Under s. 194.301, F.S., the presumption of correctness is retained in assessment challenges unless a taxpayer shows by a preponderance of the evidence that the appraiser failed to properly consider the statutory factors to determine just value. If the presumption of correctness is lost, then a taxpayer may prevail based on the preponderance of the evidence that the appraiser’s assessment is in excess of just value. However, if the presumption of correctness is retained, then the taxpayer has the burden of proving by clear and convincing evidence<sup>13</sup> that the appraiser’s assessment is in excess of just value.

The table below shows the historical success rates for taxpayers who challenged the denial of a property tax exemption and the assessments before value adjustment boards.

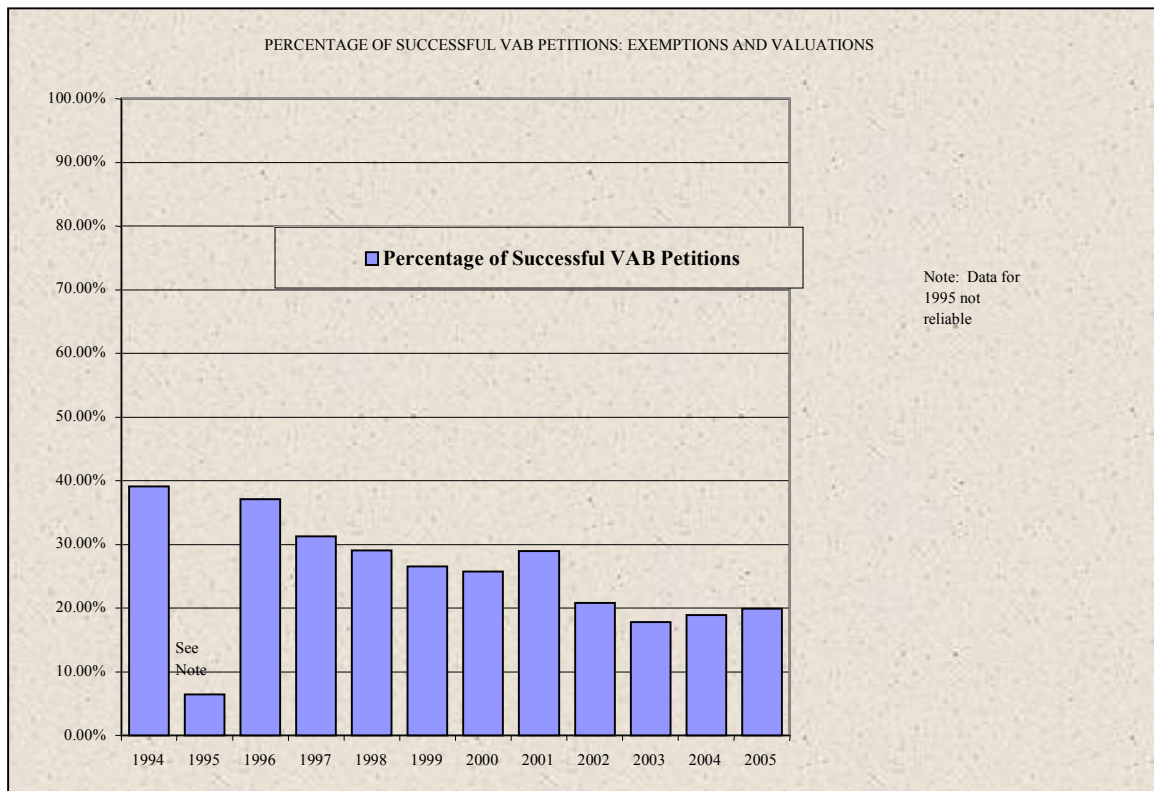
<sup>11</sup> Veto of Fla. HB 557 (1996) (letter from Gov. Chiles to Sec’y of State Sandra Mortham, May 31, 1996) (on file with Sec’y of State, The Capitol, Tallahassee, Fla.).

<sup>12</sup> Fla. Exec. Order No. 96-172 (May 31, 1996).

<sup>13</sup> “‘Clear and convincing evidence’ is an intermediate standard of proof, more than the ‘preponderance of the evidence’ standard used in most civil cases, and less than the ‘beyond a reasonable doubt’ standard used in criminal cases.” *Dieguez v. Dept. of Law Enforcement*, 947 So. 2d 591, 595 (Fla. 3d DCA 2007) (citing *State v. Graham*, 240 So. 2d 486 (Fla. 2d DCA 1970)).

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

*Id.* (citing *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).



**Source:** The Florida Department of Revenue.

### III. Effect of Proposed Changes:

Statutory Recommendation 13 revises the criteria an appraiser must consider to determine the just value of property and reduce a taxpayer's burden of proof to challenge a property appraiser's assessment or denial of an exemption.

Under this measure, to determine the just value of property for ad valorem taxation a property appraiser must consider:

1. Zoning changes, concurrency requirements and permits necessary to achieve the highest and best use of the property, and "immediately permissible" use in determining the highest and best use of property; and
2. Property condition, such as physical deterioration and functional obsolescence, in determining the cost and replacement value of improvements.

The revised factors apply to assessments beginning in 2009.

In assessment challenges under this measure:

- Property appraisers have the burden to prove that they correctly applied the statutory factors to determine the just value of property;

- Taxpayers have the burden to prove by a preponderance of the evidence that an assessment exceeds just value or that the appraisal is based on appraisal practices that differ from appraisal practices applied to similar properties; and
- Property appraisers must prove that that a valuation set by a value adjustment board is less than just value by a preponderance of the evidence in appeals of the determinations of value adjustment boards.

This measure also provides that property appraisers have the burden of proving that the denial of an assessment classification or exemption complies with the law.

The measure provides that it takes effect upon becoming a law. However, the revised assessment criteria first apply to assessments in 2009.

#### **IV. Constitutional Issues:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

This measure will potentially result in lower assessments and thus lower taxes on some properties. Millage rates may be increased on all properties to compensate for revenue losses as a result of this measure.

##### **B. Private Sector Impact:**

The impact on the private sector is indeterminate.

##### **C. Government Sector Impact:**

The impact of expanding the criteria for determining just value will potentially affect the appraised value of property. However, the actual fiscal impact is indeterminate at this time. Property appraisers may be required to revise the current procedures used to assess property.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.