

Ideas in Action

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Constitutional Revision 10 - Providing Opportunities for Equal Tax Treatment Among Taxpayers and Providing Citizen Access to Local Elected Officials

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EXECUTIVE SUMMARY: *On November 3, Florida citizens will have a unique opportunity to write their own rights and provide tax fairness to cities and special districts, allow counties to extend tax relief to mobile home owners as well as property owners willing to grant conservation easements to their property, and allow citizens to speak to their local elected officials in advance of decisions on zoning matters. Constitutional Revision 10 addresses concerns which have plagued local governments for over 20 years and can only be solved by amending the State's Constitution.*

The Second Constitutional Revision Commission has completed its work, and after a year of public hearings throughout Florida, extensive research, and exhaustive review of the 154 issues brought before it, has recommended for consideration by voters on the November 1998 ballot only nine Revisions.

These nine proposed revisions cover a broad range of interests and actually relate to more than nine subjects. The Revision Commission has grouped items as they relate to one another, so that Floridians could express their support for an entire issue with a single vote.

While this at first may appear confusing, another look shows the simplicity of the concept.

An excellent example is Revision 10.

Revision 10 as it appears on the ballot contains four components.

▶ It allows the legislature, rather than the courts, to determine which property leased by cities and special districts at ports, airports or other public purpose facilities to private enterprises, will receive the same property tax exemptions now available to those same entities when they lease governmentally owned land from counties; and

▶ It removes limitations on the individual citizen's right to communicate directly with local elected officials about zoning or variance matters scheduled for public hearings; and

Over a quarter of a century ago, in 1968, Florida gave its people the opportunity to write their own rights.

A special enactment empowered citizens with the ability to review and change their Constitution to insure that the laws affecting their lives, liberties and special pursuits were consistent with the times in which they live.

This ability for the people to review and amend their Constitution outside traditional legislative or petition processes is unique. No other state affords its citizens such access to the fabric of democracy.

Under the provisions of this law, a 37-member panel representing the general public is appointed every 20 years by the Governor, the Speaker of the House of Representatives, the President of the Senate and the Chief Justice of the Supreme Court. This panel is charged to consider amendments to the Florida Constitution submitted to it by ordinary citizens, and recommend those revisions it deems appropriate for inclusion on the General Election Ballot.

▶ It permits counties, through local option, to grant tax exemptions for property used for conservation purposes; and

▶ Also through local option, allows counties to grant tangible property tax exemptions for attachments to and furnishings in mobile homes (carports and storage sheds), along with certain furnishings in residential rental property.

All these aspects relate to local government, and provide for fairer taxation and better communications between citizens and their elected officials. Each of these was brought to the attention of the Constitutional Revision Commission during the Commission's public hearings and each solves a problem which can only be solved by a Constitutional "fix" . Thus, Revision 10 met the criteria necessary for acceptance by the CRC as it voted on measures to be placed on the ballot.

Following is a point-by-point analysis of the issues included in Proposed Revision 10.

TAX FAIRNESS -- Treating cities, special districts and counties the same

The Florida Constitution recognizes counties as creations of the state, and empowers them as the taxing authority for real, personal and intangible property. Cities and special districts such as airport, seaport, hospital and other authorities are not so recognized and empowered.

As such, counties are immune from taxation and do not pay property taxes to themselves. It is easy to understand that self-taxation would amount to government taxing government, and would be very costly to the taxpayers who ultimately would pay the bill.

Until now, special authorities have been afforded a similar treatment. However, the Florida Supreme Court (*Canaveral Port Authority v DOR*, 1996) has recently ruled that special authorities may be assessed ad valorem property taxes on the real value of property leased to businesses, such as hospital, airport, and seaport concessionaires, in addition to the intangibles tax already paid on the value of their leases. A similar ruling affecting taxation of city property leased to private enterprise was handed down in 1988 (*City of Orlando v Hausman*, 1988) . The result of these two decisions again raises the specter of government taxing government, resulting in higher taxes for the people.

The passage of Revision 10 will mean that, under criteria established by the legislature, cities and special districts will be afforded similar Constitutional protection as that already afforded to counties when private businesses lease governmental property.

There were several reasons the CRC saw the need to revise this part of the state's Constitution. Over the past twenty years, court decisions have resulted in a patchwork quilt of tax treatment for business who provide services at facilities like ports and airports. Each successive court decision has narrowed the understanding of what services constitute a "public purpose". Thus, the ownership of the land, not its use, has determined which private entities have received tax exemptions and which have not. Aircraft

maintenance hangars at a county airport, for instance, are not taxable, while similar hangars at an airport operated by a special district or city have been sent tax notices.

Business thrives on certainty but the cascade of court decisions since the early 1970's has provided an endless array of interpretations as to what is and is not taxable. Local Property Appraisers interpret those decisions differently and the result has been uncertainty in all quarters. Revision 10 allows the Legislature to set a uniform criteria for what constitutes "public purpose" use of city and special district property and then to grant tax exemptions based on that criteria. Not all property currently leased by cities and special districts to private enterprise will become exempt ... and not all property should be exempt. But the representatives of the people, the Legislature, should have the opportunity to set that criteria and craft that public policy rather than abdicate that responsibility to the courts.

By allowing these tax exemptions, (1) is the legislature creating an unfair competitive advantage for some businesses over others? And (2) is the state setting itself up for criticism by seeming to support some business enterprises over others? Finally, (3) will some enterprises which serve only a "marginal" public purpose be granted tax exemptions? The answer to each of these is a resounding NO.

1. Businesses operating at airports, for example, do not compete with similar businesses operating off the airport property. Each serves a distinctly different clientele. Once a person has parked and entered the airport or port property, the only access they have is to services provided on the port or airport property. The only competitive disadvantage is between businesses operating on city or special district owner (and therefore taxable) land versus those same types of business operating on county-owned (and tax immune) land.

2. Revision 10 offers equity to businesses operating at and on behalf of various types of local government. It will enable public-private partnerships to continue to flourish and save taxpayer dollars. When the legislature determines the criteria for which types of business serve a "public purpose," all businesses operating on government property will be afforded equal tax treatment. The state or the legislature will not be supporting any one type of business over another but will be treating all businesses fairly and equally.

3. The legislature will determine the criteria for what business enterprises, operated by private business for governmental entities, serve a "public purpose." The debate over this criteria will take place in the public forum of the legislature, not the cloistered arena of the court. The people will speak openly and public policy will be set by the legislature after extensive discussion in the sunshine.

It is important to note that the passage of Revision 10 will not reduce county tax revenues as cities and special districts are not now being taxed. There will be no missing dollars which will have to be raised from other sources.

This portion of Proposed Revision 10 merely maintains the status quo by treating all governmental bodies fairly and equitably under the law and ensures that government will not be taxing government. Defeat of Revision 10 will result in a new tax being levied on cities and special districts who lease property to private enterprises.

ELIMINATING THE TANGIBLE PERSONAL PROPERTY TAX ON MOBILE HOME IMPROVEMENTS AND RENTAL FURNISHINGS IN CERTAIN RENTAL APARTMENTS

This is another section of Proposed Revision 10 which provides for tax fairness without reducing existing revenues and also offers the same tax treatment to residents of mobile homes currently enjoyed by residential property owners (freedom from taxation on tangible personal property affixed to or inside the structure or rented furniture inside the home.)

Passing Revision 10 would allow a local option tangible personal property tax exemption for attachments such as carports and sheds, and certain furnishings inside mobile homes and some apartments like refrigerators and furniture that is rented rather than purchased.

The CRC was told at public hearings and during committee meetings by Property Appraisers that the cost of calculating and collecting this tax far exceeds the amount actually being collected. Property Appraisers must have this exemption spelled out in the Constitution to be able to stop assessing this tax.

Should this Revision not gain passage, many consumer items would be double-taxed, through the sales tax at time of purchase, and again every year as personal property.

Revision 10 eliminates an existing tax but one that is currently not being collected. This tax affects citizens who are least able to afford additional expenses, as a high percentage of mobile homes are occupied by senior citizens on a fixed income, and by lower income families.

TAX EXEMPTIONS FOR CONSERVATION EASEMENTS

This section of Proposed Revision 10 both provides tax fairness and offers a solution to the need to conserve Florida's natural beauty.

Many people who have owned undeveloped, usually rural land for years are facing significantly higher tax bills as neighboring growth and development cause the assessed value of their property to skyrocket. In many cases, this development is cutting into land available for conservation and public enjoyment.

An increasing number of landowners are in jeopardy of losing their property to tax bills, or being forced to sell it for less than its value because they are unable to afford these

taxes. Usually, the land will be purchased and used by developers, not only depriving an individual of his property but paving yet another section of Florida.

Proposed Revision 10 through local option offers landowners the opportunity to grant conservation easements on their property, and receive tax exemptions for such dedicated property.

While this portion of the Revision does in fact remove some property from the tax rolls, this loss is more than offset by the savings government will enjoy by not having to purchase land for conservation and green space purposes. Also, the landowner will be able to keep his property.

RESTORING ACCESS TO LOCAL ELECTED OFFICIALS

Current Supreme Court interpretation of statutory law prohibits citizens from speaking with their local elected officials on zoning and variance matters scheduled for public hearing outside the official meeting. (Jennings v. Dade County and Board of Commissioners of Brevard County v. Snyder) If such a contact is found to have occurred, zoning board decisions may be appealed and set aside.

Currently citizens' groups, neighborhood associations, and private individuals, and everyone else in the community are denied this right. These groups or individuals can only make their opinions about a zoning change known during a quasi-judicial hearing before the City or County Commission.

Passage of Revision 10 would ease the limitations on informal contact of elected officials on zoning and variance matters. Citizen's groups would be allowed to invite local elected officials to address their organizations' concerns and neighbors would be allowed to express their views to a local elected official when they see him/her in the neighborhood or out in the community.

LETTING THE VOTERS DECIDE

Most voters do not recognize the problems with the current Constitution. Recent studies have shown almost a universal lack of knowledge not only about the amendment process, but about the very document itself.

For example, people interviewed in focus groups and surveys are surprised that under present law, one government entity -- a county -- may tax another government entity -- a city or a special district -- for airport and seaport activities or other public purposes, unless these activities are performed on state or county property. Most voters do not know that in certain matters regarding zoning and variances, conversations with their elected officials are prohibited outside public hearings.

A "yes" vote on Proposed Revision 10 will allow the legislature to decide which city-owned and special district-owned property is used for public purpose, and extend the

same tax exemptions now enjoyed by counties. It also will allow the granting of exemptions on property used for conservation purposes. It will allow by local option for counties to grant exemptions for carports, sheds and other attachments on mobile homes, and personal property located within some residential rental units. And, it will eliminate many of the restrictions that currently prevent citizens from talking freely with their elected officials.

Most importantly, these proposals were brought to the attention of the Constitutional Revision Commission by individuals in the public, and it will be the public which makes the final decision on Florida's future in November.

About the Author

Bonnie Basham has served as a lobbyist for over twenty years and has been involved in the governmental leasehold issue for those same 20 years on behalf of governmental lessees. She and her husband, Dustin, own a full-service consulting firm, Capital Ideas in Tallahassee. Bonnie has two Master's Degrees from Stetson University, one in Political Science the other in Education.

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