

1 A bill to be entitled
2 An act relating to property rights; amending s.
3 497.345, F.S.; relating to county or
4 municipality action regarding abandoned
5 cemeteries; amending s. 197.182, F.S.;
6 providing that amounts paid by a taxpayer in
7 error because of an error in the tax notice
8 must be refunded by the tax collector or
9 applied to taxes actually due; amending s.
10 196.1975, F.S., which provides exemptions for
11 nonprofit homes for the aged; specifying that
12 the exemption applicable to such homes whose
13 residents meet certain income limitations
14 applies to individual units or apartments of
15 such homes; providing for application of a
16 residency affidavit requirement to applicants
17 for such exemption; revising language with
18 respect to qualification for the alternative
19 exemption provided by said section for those
20 portions of a home which do not meet the income
21 limitations; providing that s. 196.195, F.S.,
22 which provides requirements and criteria for
23 determining the profit or nonprofit status of
24 an applicant for exemption, and s. 196.196,
25 F.S., which provides criteria for determining
26 whether property is entitled to a charitable,
27 religious, scientific, or literary exemption,
28 do not apply to said section; creating s.
29 196.2002, F.S.; exempting certain not for
30 profit water and wastewater systems from ad
31 valorem taxation; creating s. 192.0105, F.S.;

1 creating the Florida Taxpayer's Bill of Rights
2 for property taxes and assessments, which
3 compiles taxpayer rights as found in the
4 Florida Statutes and rules of the Department of
5 Revenue, including the right to know, the right
6 to due process, the right to redress, and the
7 right to confidentiality; providing an
8 effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Section 497.345, Florida Statutes, is
13 amended to read:

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15 (4) A county or municipality, or any other party, may
16 not take action to maintain a cemetery which has been
17 abandoned for at least 20 years and which is located within a
18 county with a population of less than 250,000 based on the
19 1990 decennial census, and which is situated within a
20 residential neighborhood on private property which is no
21 larger than 3.5 acres in size, the owner having obtained legal
22 title to the property no later than January 1, 1998, without
23 the express permission of the private property owner, other
24 than to continue basic maintenance of existing cemetery sites.
25 No privately solicited funds or funds authorized for public
26 expenditure pursuant to subsection (1) may be used on such
27 property without the express permission of the private
28 property owner.

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29 Section 2. Paragraphs (a) and (b) of subsection (1)
30 and subsection (3) of section 197.182, Florida Statutes, are
31 amended to read:

31

1 197.182 Department of Revenue to pass upon and order
2 refunds.--

3 (1)(a) Except as provided in paragraph (b), the
4 department shall pass upon and order refunds when payment of
5 taxes assessed on the county tax rolls has been made
6 voluntarily or involuntarily under any of the following
7 circumstances:

8 1. When an overpayment has been made.

9 2. When a payment has been made when no tax was due.

10 3. When a bona fide controversy exists between the tax
11 collector and the taxpayer as to the liability of the taxpayer
12 for the payment of the tax claimed to be due, the taxpayer
13 pays the amount claimed by the tax collector to be due, and it
14 is finally adjudged by a court of competent jurisdiction that
15 the taxpayer was not liable for the payment of the tax or any
16 part thereof.

17 4. When a payment has been made in error by a taxpayer
18 to the tax collector, if, within 24 months of the date of the
19 erroneous payment and prior to any transfer of the assessed
20 property to a third party for consideration, the party seeking
21 a refund makes demand for reimbursement of the erroneous
22 payment upon the owner of the property on which the taxes were
23 erroneously paid and reimbursement of the erroneous payment is
24 not received within 45 days after such demand. The demand for
25 reimbursement shall be sent by certified mail, return receipt
26 requested, and a copy thereof shall be sent to the tax
27 collector. If the payment was made in error by the taxpayer
28 because of an error in the tax notice sent to the taxpayer,
29 refund must be made as provided in paragraph (b)2.

1 5. When any payment has been made for tax certificates
2 that are subsequently corrected or are subsequently determined
3 to be void under s. 197.443.

4 (b)1. Those refunds that have been ordered by a court
5 and those refunds that do not result from changes made in the
6 assessed value on a tax roll certified to the tax collector
7 shall be made directly by the tax collector without order from
8 the department and shall be made from undistributed funds
9 without approval of the various taxing authorities.

10 Overpayments in the amount of \$5 or less may be retained by
11 the tax collector unless a written claim for a refund is
12 received from the taxpayer. Overpayments over \$5 resulting
13 from taxpayer error, if determined within the 4-year period of
14 limitation, are to be automatically refunded to the taxpayer.
15 Such refunds do not require approval from the department.

16 2. When a payment has been made in error by a taxpayer
17 to the tax collector because of an error in the tax notice
18 sent to the taxpayer, refund must be made directly by the tax
19 collector and does not require approval from the department.
20 At the request of the taxpayer, the amount paid in error may
21 be applied by the tax collector to the taxes for which the
22 taxpayer is actually liable.

23 (3) A refund ordered by the department pursuant to
24 this section shall be made by the tax collector in one
25 aggregate amount composed of all the pro rata shares of the
26 several taxing authorities concerned, except that a partial
27 refund is allowed when one or more of the taxing authorities
28 concerned do not have funds currently available to pay their
29 pro rata shares of the refund and this would cause an
30 unreasonable delay in the total refund. A statement by the
31 tax collector explaining the refund shall accompany the refund

1 payment. When taxes become delinquent as a result of a refund
2 pursuant to subparagraph (1)(a)4. or subparagraph (1)(b)2.,
3 the tax collector shall notify the property owner that the
4 taxes have become delinquent and that a tax certificate will
5 be sold if the taxes are not paid within 30 days after the
6 date of delinquency.

7 Section 3. Section 196.1975, Florida Statutes, is
8 amended to read:

9 196.1975 Exemption for property used by nonprofit
10 homes for the aged.--Nonprofit homes for the aged are exempt
11 to the extent that they meet the following criteria:

12 (1) The applicant must be a corporation not for profit
13 pursuant to the provisions of chapter 617 or a Florida limited
14 partnership, the sole general partner of which is a
15 corporation not for profit, pursuant to the provisions of
16 chapter 617 and the corporation not for profit must have been
17 exempt as of January 1 of the year for which exemption from ad
18 valorem property taxes is requested from federal income
19 taxation by having qualified as an exempt charitable
20 organization under the provisions of s. 501(c)(3) of the
21 Internal Revenue Code of 1954 or of the corresponding section
22 of a subsequently enacted federal revenue act.

23 (2) A facility will not qualify as a "home for the
24 aged" unless at least 75 percent of the occupants are over the
25 age of 62 years or totally and permanently disabled. For
26 homes for the aged which are exempt from paying income taxes
27 to the United States as specified in subsection (1), licensing
28 by the Agency for Health Care Administration is required for
29 ad valorem tax exemption hereunder only if the home:

30 (a) Furnishes medical facilities or nursing services
31 to its residents, or

1 (b) Qualifies as an assisted living facility under
2 part III of chapter 400.

3 (3) Those portions of the home for the aged which are
4 devoted exclusively to the conduct of religious services or
5 the rendering of nursing or medical services are exempt from
6 ad valorem taxation.

7 (4)(a) After removing the assessed value exempted in
8 subsection (3), units or apartments in homes for the aged
9 shall be exempt only to the extent that residency in the
10 existing unit or apartment of the applicant home is reserved
11 for or restricted to or occupied by persons who have resided
12 in the applicant home and in good faith made this state their
13 permanent residence as of January 1 of the year in which
14 exemption is claimed and who also meet the requirements set
15 forth in one of the following subparagraphs:

16 1. Persons who have gross incomes of not more than
17 \$7,200 per year and who are 62 years of age or older.

18 2. Couples, one of whom must be 62 years of age or
19 older, having a combined gross income of not more than \$8,000
20 per year, or the surviving spouse thereof, who lived with the
21 deceased at the time of the deceased's death in a home for the
22 aged.

23 3. Persons who are totally and permanently disabled
24 and who have gross incomes of not more than \$7,200 per year.

25 4. Couples, one or both of whom are totally and
26 permanently disabled, having a combined gross income of not
27 more than \$8,000 per year, or the surviving spouse thereof,
28 who lived with the deceased at the time of the deceased's
29 death in a home for the aged.

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1 However, the income limitations do not apply to totally and
2 permanently disabled veterans, provided they meet the
3 requirements of s. 196.081.

4 (b) The maximum income limitations permitted in this
5 subsection shall be adjusted, effective January 1, 1977, and
6 on each succeeding year, by the percentage change in the
7 average cost-of-living index in the period January 1 through
8 December 31 of the immediate prior year compared with the same
9 period for the year prior to that. The index is the average
10 of the monthly consumer price index figures for the stated
11 12-month period, relative to the United States as a whole,
12 issued by the United States Department of Labor.

13 (5) Nonprofit housing projects which are financed by a
14 mortgage loan made or insured by the United States Department
15 of Housing and Urban Development under s. 202, s. 202 with a
16 s. 8 subsidy, s. 221(d)(3) or (4), or s. 236 of the National
17 Housing Act, as amended, and which are subject to the income
18 limitations established by that department shall be exempt
19 from ad valorem taxation.

20 (6) For the purposes of this section, gross income
21 includes social security benefits payable to the person or
22 couple or assigned to an organization designated specifically
23 for the support or benefit of that person or couple.

24 (7) It is hereby declared to be the intent of the
25 Legislature that subsection (3) implements the ad valorem tax
26 exemption authorized in the third sentence of s. 3(a), Art.
27 VII, State Constitution, and the remaining subsections
28 implement s. 6(e), Art. VII, State Constitution, for purposes
29 of granting such exemption to homes for the aged.

30 (8) Physical occupancy on January 1 is not required in
31 those instances in which a home restricts occupancy to persons

1 meeting the income requirements specified in this section.
2 Those portions of a ~~such~~ property failing to meet those
3 requirements shall qualify for an alternative exemption as
4 provided in subsection (9). In a home in which at least 25
5 percent of the units or apartments of the home are restricted
6 to or occupied by persons meeting the income requirements
7 specified in this section, the common areas of that home are
8 exempt from taxation.

9 (9)(a) Each unit or apartment of a home for the aged
10 not exempted in subsection (3) or subsection (4), which is
11 operated by a not for profit corporation and is owned by such
12 corporation or leased by such corporation from a health
13 facilities authority pursuant to part III of chapter 154 or an
14 industrial development authority pursuant to part III of
15 chapter 159, and which property is used by such home for the
16 aged for the purposes for which it was organized, is exempt
17 from all ad valorem taxation, except for assessments for
18 special benefits, to the extent of \$25,000 of assessed
19 valuation of such property for each apartment or unit:

20 1. Which is used by such home for the aged for the
21 purposes for which it was organized; and

22 2. Which is occupied, on January 1 of the year in
23 which exemption from ad valorem property taxation is
24 requested, by a person who resides therein and in good faith
25 makes the same his or her permanent home.

26 (b) Each corporation ~~home~~ applying for an exemption
27 under paragraph (a) of this subsection or paragraph (4)(a)
28 must file with the annual application for exemption an
29 affidavit from each person who occupies a unit or apartment
30 for which an exemption under either of those paragraphs ~~that~~
31 ~~paragraph~~ is claimed stating that the person resides therein

1 and in good faith makes that unit or apartment his or her
2 permanent residence.

3 (10) Homes for the aged, or life care communities,
4 however designated, which are financed through the sale of
5 health facilities authority bonds or bonds of any other public
6 entity, whether on a sale-leaseback basis, a sale-repurchase
7 basis, or other financing arrangement, or which are financed
8 without public-entity bonds, are exempt from ad valorem
9 taxation only in accordance with the provisions of this
10 section.

11 (11) Any portion of such property used for nonexempt
12 purposes may be valued and placed upon the tax rolls
13 separately from any portion entitled to exemption pursuant to
14 this chapter.

15 (12) When it becomes necessary for the property
16 appraiser to determine the value of a unit, he or she shall
17 include in such valuation the proportionate share of the
18 common areas, including the land, fairly attributable to such
19 unit, based upon the value of such unit in relation to all
20 other units in the home, unless the common areas are otherwise
21 exempted by subsection (8).

22 (13) Sections 196.195 and 196.196 do not apply to this
23 section.

24 Section 4. Section 196.2002, Florida Statutes, is
25 created to read:

26 196.2002 Exemption for 501(c)(12) Not-for-Profit Water
27 and Wastewater Systems--

28 Property of any not-for-profit water and wastewater
29 corporation which holds a current exemption from federal
30 income tax under section 501(c)(12) of the Internal Revenue
31 Code, as amended, shall be exempt from ad valorem taxation if

1 the sole or primary function of the corporation is to
2 construct, maintain or operate a water and/or wastewater
3 system in this state.

4 Section 5. Section 192.0105, Florida Statutes, is
5 created to read:

6 192.0105 Taxpayer rights.--There is created a Florida
7 Taxpayer's Bill of Rights for property taxes and assessments
8 to guarantee that the rights, privacy, and property of the
9 taxpayers of this state are adequately safeguarded and
10 protected during tax levy, assessment, collection, and
11 enforcement processes administered under the revenue laws of
12 this state. The Taxpayer's Bill of Rights compiles, in one
13 document, brief but comprehensive statements that summarize
14 the rights and obligations of the property appraisers, tax
15 collectors, clerks of the court, local governing boards,
16 Department of Revenue, and taxpayers. The rights afforded
17 taxpayers to assure that their privacy and property are
18 safeguarded and protected during tax levy, assessment, and
19 collection are available only insofar as they are implemented
20 in other parts of the Florida Statutes or rules of the
21 Department of Revenue. The rights so guaranteed to state
22 taxpayers in the Florida Statutes and the departmental rules
23 include:

24 (1) THE RIGHT TO KNOW.--

25 (a) The right to be mailed notice of proposed property
26 taxes and proposed or adopted non-ad valorem assessments (see
27 ss. 194.011(1), 200.065(2)(b) and (d) and (13)(a), and
28 200.069). The notice must also inform the taxpayer that the
29 final tax bill may contain additional non-ad valorem
30 assessments (see s. 200.069(12)).

31

1 (b) The right to notification of a public hearing on
 2 each taxing authority's tentative budget and proposed millage
 3 rate and advertisement of a public hearing to finalize the
 4 budget and adopt a millage rate (see s. 200.065(2)(c) and
 5 (d)).

6 (c) The right to advertised notice of the amount by
 7 which the tentatively adopted millage rate results in taxes
 8 that exceed the previous year's taxes (see s. 200.065(2)(d)
 9 and (3)). The right to notification by first-class mail of a
 10 comparison of the amount of the taxes to be levied from the
 11 proposed millage rate under the tentative budget change,
 12 compared to the previous year's taxes, and also compared to
 13 the taxes that would be levied if no budget change is made
 14 (see ss. 200.065(2)(b) and 200.069(2), (3), (4), and (9)).

15 (d) The right that the adopted millage rate will not
 16 exceed the tentatively adopted millage rate. If the tentative
 17 rate exceeds the proposed rate, each taxpayer shall be mailed
 18 notice comparing his or her taxes under the tentatively
 19 adopted millage rate to the taxes under the previously
 20 proposed rate, before a hearing to finalize the budget and
 21 adopt millage (see s. 200.065(2)(d)).

22 (e) The right to be sent notice by first-class mail of
 23 a non-ad valorem assessment hearing at least 20 days before
 24 the hearing with pertinent information, including the total
 25 amount to be levied against each parcel. All affected property
 26 owners have the right to appear at the hearing and to file
 27 written objections with the local governing board (see s.
 28 197.3632(4)(b) and (c) and (10)(b)2.b.).

29 (f) The right of an exemption recipient to be sent a
 30 renewal application for that exemption, the right to a receipt
 31 for homestead exemption claim when filed, and the right to

1 notice of denial of the exemption (see ss. 196.011(6),
 2 196.131(1), 196.151, and 196.193(1)(c) and (5)).

3 (g) The right, on property determined not to have been
 4 entitled to homestead exemption in a prior year, to notice of
 5 intent from the property appraiser to record notice of tax
 6 lien and the right to pay tax, penalty, and interest before a
 7 tax lien is recorded for any prior year (see s.
 8 196.161(1)(b)).

9 (h) The right to be informed during the tax collection
 10 process, including: notice of tax due; notice of back taxes;
 11 notice of late taxes and assessments and consequences of
 12 nonpayment; opportunity to pay estimated taxes and non-ad
 13 valorem assessments when the tax roll will not be certified in
 14 time; notice when interest begins to accrue on delinquent
 15 provisional taxes; notice of the right to prepay estimated
 16 taxes by installment; a statement of the taxpayer's estimated
 17 tax liability for use in making installment payments; and
 18 notice of right to defer taxes and non-ad valorem assessments
 19 on homestead property (see ss. 197.322(3), 197.3635, 197.343,
 20 197.363(2)(c), 197.222(3) and (5), 197.2301(3),
 21 197.3632(8)(a), 193.1145(10)(a), and 197.254(1)).

22 (i) The right to an advertisement in a newspaper
 23 listing names of taxpayers who are delinquent in paying
 24 tangible personal property taxes, with amounts due, and giving
 25 notice that interest is accruing at 18 percent and that,
 26 unless taxes are paid, warrants will be issued, prior to
 27 petition made with the circuit court for an order to seize and
 28 sell property (see s. 197.402(2)).

29 (j) The right to be mailed notice when a petition has
 30 been filed with the court for an order to seize and sell
 31 property and the right to be mailed notice, and to be served

1 notice by the sheriff, before the date of sale, that
2 application for tax deed has been made and property will be
3 sold unless back taxes are paid (see ss. 197.413(5),
4 197.502(4)(a), and 197.522(1)(a) and (2)).

5 (2) THE RIGHT TO DUE PROCESS.--

6 (a) The right to an informal conference with the
7 property appraiser to present facts the taxpayer considers to
8 support changing the assessment and to have the property
9 appraiser present facts supportive of the assessment upon
10 proper request of any taxpayer who objects to the assessment
11 placed on his or her property (see s. 194.011(2)).

12 (b) The right to petition the value adjustment board
13 over objections to assessments, denial of exemption, denial of
14 agricultural classification, denial of historic
15 classification, denial of high-water recharge classification,
16 disapproval of tax deferral, and any penalties on deferred
17 taxes imposed for incorrect information willfully filed.
18 Payment of estimated taxes does not preclude the right of the
19 taxpayer to challenge his or her assessment (see ss.
20 194.011(3), 196.011(6) and (9)(a), 196.151, 196.193(1)(c) and
21 (5), 193.461(2), 193.503(7), 193.625(2), 197.253(2),
22 197.301(2), and 197.2301(11)).

23 (c) The right to file a petition for exemption or
24 agricultural classification with the value adjustment board
25 when an application deadline is missed, upon demonstration of
26 particular extenuating circumstances for filing late (see ss.
27 193.461(3)(a) and 196.011(1), (7), (8), and (9)(c)).

28 (d) The right to prior notice of the value adjustment
29 board's hearing date and the right to the hearing within 4
30 hours of scheduled time (see s. 194.032(2)).

31

1 (e) The right to notice of date of certification of
2 tax rolls and receipt of property record card if requested
3 (see ss. 193.122(2) and (3) and 194.032(2)).

4 (f) The right, in value adjustment board proceedings,
5 to have all evidence presented and considered at a public
6 hearing at the scheduled time, to be represented by attorney
7 or agent, to have witnesses sworn and cross-examined, and to
8 examine property appraisers or evaluators employed by the
9 board who present testimony (see ss. 194.034(1)(a) and (c) and
10 (4), and 194.035(2)).

11 (g) The right to be mailed a timely written decision
12 by the value adjustment board containing findings of fact and
13 conclusions of law and reasons for upholding or overturning
14 the determination of the property appraiser and the right to
15 advertised notice of all board actions, including appropriate
16 narrative and column descriptions, in brief and nontechnical
17 language (see ss. 194.034(2) and 194.037(3)).

18 (h) The right at a public hearing on non-ad valorem
19 assessments or municipal special assessments to provide
20 written objections and to provide testimony to the local
21 governing board (see ss. 197.3632(4)(c) and 170.08).

22 (i) The right to bring action in circuit court to
23 contest a tax assessment or appeal value adjustment board
24 decisions to disapprove exemption or deny tax deferral (see
25 ss. 194.036(1)(c) and (2), 194.171, 196.151, and 197.253(2)).

26 (3) THE RIGHT TO REDRESS.--

27 (a) The right to discounts for early payment on all
28 taxes and non-ad valorem assessments collected by the tax
29 collector, the right to pay installment payments with
30 discounts, and the right to pay delinquent personal property
31 taxes under an installment payment program when implemented by

1 the county tax collector (see ss. 197.162, 197.3632(8) and
2 (10)(b)3., 197.222(1), and 197.4155).

3 (b) The right, upon filing a challenge in circuit
4 court and paying taxes admitted in good faith to be owing, to
5 be issued a receipt and have suspended all procedures for the
6 collection of taxes until the final disposition of the action
7 (see s. 194.171(3)).

8 (c) The right to have penalties reduced or waived upon
9 a showing of good cause when a return is not intentionally
10 filed late and the right to pay interest at a reduced rate if
11 the court finds that the amount of tax owed by the taxpayer is
12 greater than the amount the taxpayer has in good faith
13 admitted and paid (see ss. 193.072(4) and 194.192(2)).

14 (d) The right to a refund when overpayment of taxes
15 has been made under specified circumstances (see ss.
16 193.1145(8)(e) and 197.182(1)).

17 (e) The right to an extension to file a tangible
18 personal property tax return upon making proper and timely
19 request (see s. 193.063).

20 (f) The right to redeem real property and redeem tax
21 certificates at any time before a tax deed is issued and the
22 right to have tax certificates canceled if sold where taxes
23 had been paid or if other error makes it void or correctable.
24 Property owners have the right to be free from contact by a
25 certificateholder for 2 years (see ss. 197.432(14) and (15),
26 197.442(1), 197.443, and 197.472(1) and (7)).

27 (g) The right of the taxpayer, property appraiser, tax
28 collector, or the department, as the prevailing party in a
29 judicial or administrative action brought or maintained
30 without the support of justiciable issues of fact or law, to
31 recover all costs of the administrative or judicial action,

1 including reasonable attorney's fees, and of the department
2 and the taxpayer to settle such claims through negotiations
3 (see ss. 57.105 and 57.111).

4 (4) THE RIGHT TO CONFIDENTIALITY.--

5 (a) The right to have information kept confidential,
6 including federal tax information, ad valorem tax returns,
7 social security numbers, all financial records produced by the
8 taxpayer, Form DR-219 returns for documentary stamp tax
9 information, and sworn statements of gross income, copies of
10 federal income tax returns for the prior year, wage and
11 earnings statements (W-2 forms), and other documents (see ss.
12 192.105, 193.074, 193.114(6), 195.027(3) and (6), and
13 196.101(4)(c)).

14 (b) The right to limiting access to a taxpayer's
15 records by a property appraiser, the Department of Revenue,
16 and the Auditor General only to those instances in which it is
17 determined that such records are necessary to determine either
18 the classification or the value of taxable nonhomestead
19 property (see s. 195.027(3)).

20 Section 6. This act shall take effect upon becoming a
21 law.