

1 A bill to be entitled
2 An act relating to just valuation of property; amending s.
3 193.011, F.S.; specifying prohibited conditions precedent
4 to use of present cash value of property as a just
5 valuation factor; revising the condition of property just
6 valuation factor; requiring property appraisers to use
7 only the income factor in arriving at just value of
8 certain income-producing properties; creating s. 193.018,
9 F.S.; authorizing owners of certain properties to enter
10 into deed-restriction agreements with counties for certain
11 purposes; requiring property appraisers to consider deed-
12 restriction agreements in determining just value;
13 providing for payment of back taxes plus interest if the
14 deed-restriction agreement is terminated early; amending
15 s. 194.011, F.S.; requiring property appraisers to
16 establish receipt of disputed receipt of assessment
17 notices; revising provisions relating to provision of
18 evidence by petitioners and property appraisers; amending
19 s. 194.013, F.S.; requiring value adjustment boards to
20 waive a petition filing fee for taxpayers eligible for
21 certain constitutional exemptions; amending s. 194.015,
22 F.S.; revising the membership of value adjustment boards,
23 appointment criteria, and quorum requirements; amending s.
24 194.032, F.S.; providing for criteria for rescheduling
25 certain hearings under certain circumstances; amending s.
26 194.034, F.S.; requiring value adjustment boards to order
27 refund of certain filing fees if a determination of a
28 property appraiser is overturned; amending s. 194.192,

29 F.S.; providing for judgments against property appraisers
 30 under certain circumstances; providing for assessment and
 31 award of attorney fees to taxpayers under certain
 32 circumstances; amending s. 194.301, F.S.; requiring
 33 property appraisers to provide evidence of correctness of
 34 assessments in certain actions; deleting provisions
 35 providing a presumption of correctness of property
 36 appraiser's assessments and imposing requirements on
 37 taxpayers to prove assessments excessive; providing an
 38 effective date.

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

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42 Section 1. Effective upon this act becoming a law and
 43 applicable to assessments beginning January 1, 2008, section
 44 193.011, Florida Statutes, is amended to read:

45 193.011 Factors to consider in deriving just valuation.--

46 (1) In arriving at just valuation as required under s. 4,
 47 Art. VII of the State Constitution, the property appraiser shall
 48 take into consideration the following factors:

49 (a) ~~(1)~~ The present cash value of the property, which is
 50 the amount a willing purchaser would pay a willing seller,
 51 exclusive of reasonable fees and costs of purchase including
 52 costs of removal of tangible personal property, in cash or the
 53 immediate equivalent thereof in a transaction at arm's length,
 54 which does not require as a condition precedent to the proposed
 55 use of the property:

56 1. The granting of a variance from existing zoning;

- 57 2. A change in zoning;
- 58 3. Relief from any existing local ordinance or regulation;
- 59 4. Relief from any judicial limitation; or
- 60 5. The permitting of the intended use of the property by
- 61 the state or any state agency, local or regional agency, local
- 62 or regional government, or taxing authority;

63 (b)-(2) The highest and best use to which the property can
 64 be expected to be put in the immediate future, which does not
 65 require satisfaction of any of the conditions precedent
 66 enumerated in paragraph (a), and the present use of the
 67 property, taking into consideration any applicable judicial
 68 limitation, local or state land use regulation, or historic
 69 preservation ordinance, and considering any moratorium imposed
 70 by executive order, law, ordinance, regulation, resolution, or
 71 proclamation adopted by any governmental body or agency or the
 72 Governor when the moratorium or judicial limitation prohibits or
 73 restricts the development or improvement of property as
 74 otherwise authorized by applicable law. The applicable
 75 governmental body or agency or the Governor shall notify the
 76 property appraiser in writing of any executive order, ordinance,
 77 regulation, resolution, or proclamation it adopts imposing any
 78 such limitation, regulation, or moratorium;

79 (c)-(3) The location of said property;

80 (d)-(4) The quantity or size of said property;

81 (e)-(5) The cost of said property and the present
 82 replacement value of any improvements thereon;

83 (f)-(6) The condition of said property. Each property's
 84 individual characteristics shall be considered when determining

85 physical deterioration, functional obsolescence, and external
 86 obsolescence;

87 (g)~~(7)~~ The income from said property; and

88 (h)~~(8)~~ The net proceeds of the sale of the property, as
 89 received by the seller, after deduction of all of the usual and
 90 reasonable fees and costs of the sale, including the costs and
 91 expenses of financing, and allowance for unconventional or
 92 atypical terms of financing arrangements. When the net proceeds
 93 of the sale of any property are utilized, directly or
 94 indirectly, in the determination of just valuation of realty of
 95 the sold parcel or any other parcel under the provisions of this
 96 section, the property appraiser, for the purposes of such
 97 determination, shall exclude any portion of such net proceeds
 98 attributable to payments for household furnishings or other
 99 items of personal property.

100 (2) Notwithstanding the requirement that property
 101 appraisers consider all of the factors enumerated in subsection
 102 (1) in arriving at just valuation, property appraisers shall
 103 consider only the income from income-producing property in the
 104 case of all residential rental property and all commercial
 105 property that is leased to more than one legal entity, each of
 106 which conducts a separate business activity on the property, in
 107 determining the just valuation of such property.

108 Section 2. Section 193.018, Florida Statutes, is created
 109 to read:

110 193.018 Assessment of deed-restricted property.--

111 (1) The owner of residential rental property providing
 112 affordable housing, multiunit commercial rental property,

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113 property used as a marina, or property rented for use by mobile
114 homes may enter into a deed-restriction agreement with the
115 county to maintain the property at its current use for a period
116 of at least 5 years.

117 (2) The property appraiser shall consider the deed-
118 restriction agreement in determining the just value of the
119 property.

120 (3) If, prior to the expiration of the deed-restriction
121 agreement, the property is not used for the purposes set forth
122 in the deed-restriction agreement, the deed-restriction
123 agreement shall be terminated and the property owner shall pay
124 to the county an amount equal to the additional taxes that would
125 have been paid in prior years had the deed-restriction agreement
126 not been in effect, plus 12 percent interest.

127 Section 3. Paragraph (d) of subsection (3) and subsection
128 (4) of section 194.011, Florida Statutes, are amended to read:

129 194.011 Assessment notice; objections to assessments.--

130 (3) A petition to the value adjustment board must be in
131 substantially the form prescribed by the department.

132 Notwithstanding s. 195.022, a county officer may not refuse to
133 accept a form provided by the department for this purpose if the
134 taxpayer chooses to use it. A petition to the value adjustment
135 board shall describe the property by parcel number and shall be
136 filed as follows:

137 (d) The petition may be filed, as to valuation issues, at
138 any time during the taxable year on or before the 25th day
139 following the mailing of notice by the property appraiser as
140 provided in subsection (1). If the actual receipt of the notice

141 is disputed, the burden of proof shall be on the property
 142 appraiser to establish receipt by clear and convincing evidence.
 143 With respect to an issue involving the denial of an exemption,
 144 an agricultural or high-water recharge classification
 145 application, an application for classification as historic
 146 property used for commercial or certain nonprofit purposes, or a
 147 deferral, the petition must be filed at any time during the
 148 taxable year on or before the 30th day following the mailing of
 149 the notice by the property appraiser under s. 193.461, s.
 150 193.503, s. 193.625, or s. 196.193 or notice by the tax
 151 collector under s. 197.253.

152 (4) (a) At least 15 days before the hearing, the petitioner
 153 shall provide to the property appraiser a list of evidence to be
 154 presented at the hearing, together with copies of all
 155 documentation to be considered by the value adjustment board and
 156 a summary of evidence to be presented by witnesses. Failure of
 157 the petitioner to timely comply with the requirements of this
 158 paragraph shall result in the rescheduling of the hearing.

159 (b) At least 15 ~~No later than 7~~ days before the hearing,
 160 ~~if the petitioner has provided the information required under~~
 161 ~~paragraph (a), and if requested in writing by the petitioner,~~
 162 the property appraiser shall provide to the petitioner a list of
 163 evidence to be presented at the hearing, together with copies of
 164 all documentation to be considered by the value adjustment board
 165 and a summary of evidence to be presented by witnesses. The
 166 evidence list must contain the property record card if provided
 167 by the clerk. Failure of the property appraiser to timely comply

168 with the requirements of this paragraph shall result in a
 169 rescheduling of the hearing.

170 Section 4. Subsection (2) of section 194.013, Florida
 171 Statutes, is amended to read:

172 194.013 Filing fees for petitions; disposition; waiver.--

173 (2) The value adjustment board shall waive the filing fee
 174 with respect to a petition filed by a taxpayer who is eligible
 175 to receive one or more of the exemptions under s. 6(c), (f), or
 176 (g), Art. VII of the State Constitution, regardless of whether
 177 the taxpayer's local government grants the additional local
 178 homestead exemptions. The filing fee also shall be waived for a
 179 taxpayer who demonstrates at the time of filing, by an
 180 appropriate certificate or other documentation issued by the
 181 Department of Children and Family Services and submitted with
 182 the petition, that the petitioner is then an eligible recipient
 183 of temporary assistance under chapter 414.

184 Section 5. Section 194.015, Florida Statutes, is amended
 185 to read:

186 194.015 Value adjustment board.--

187 (1) There is hereby created a value adjustment board for
 188 each county, which shall consist of five members.

189 (2)(a)1. Three members shall be appointed by ~~of~~ the
 190 governing body of the county, as follows:

191 a. One member must own a homestead property within the
 192 county.

193 b. One member must own a business that occupies commercial
 194 space located within the county.

195 c. An appointee may not be a member or an employee of any
 196 taxing authority.

197 ~~2. as elected from the membership of the board of said~~
 198 ~~governing body,~~ One of such appointees ~~whom~~ shall be elected
 199 chairperson.

200 (b) ~~, and~~ Two members shall be appointed by ~~of~~ the school
 201 board, as follows:

202 1. One member must own a business that occupies commercial
 203 space located within the school district.

204 2. One member must be eligible to receive one or more of
 205 the exemptions under s. 6(c), (f), or (g), Art. VII of the State
 206 Constitution, regardless of whether the taxpayer's local
 207 government grants the additional local homestead exemptions.

208 3. An appointee may not be a member or an employee of any
 209 taxing authority ~~as elected from the membership of the school~~
 210 ~~board. The members of the board may be temporarily replaced by~~
 211 ~~other members of the respective boards on appointment by their~~
 212 ~~respective chairpersons.~~

213 (3) Any three members shall constitute a quorum of the
 214 board, except that each quorum must include at least one member
 215 appointed by the ~~of said~~ governing body of the county board ~~and~~
 216 at least one member appointed by ~~of~~ the school board, and no
 217 meeting of the board shall take place unless a quorum is
 218 present.

219 (4) Members of the board may receive such per diem
 220 compensation as is allowed by law for state employees if both
 221 bodies elect to allow such compensation.

222 (5) The clerk of the governing body of the county shall be
 223 the clerk of the value adjustment board.

224 (6) (a) The office of the county attorney may be counsel to
 225 the board unless the county attorney represents the property
 226 appraiser, in which instance the board shall appoint private
 227 counsel who has practiced law for over 5 years and who shall
 228 receive such compensation as may be established by the board.

229 (b) Meetings ~~No meeting~~ of the board may not shall take
 230 place unless counsel to the board is present. However, counsel
 231 for the property appraiser shall not be required when the county
 232 attorney represents only the board at the board hearings, even
 233 though the county attorney may represent the property appraiser
 234 in other matters or at a different time.

235 (7) Two-fifths of the expenses of the board shall be borne
 236 by the district school board and three-fifths by the district
 237 county commission.

238 Section 6. Subsection (2) of section 194.032, Florida
 239 Statutes, is amended to read:

240 194.032 Hearing purposes; timetable.--

241 (2) The clerk of the governing body of the county shall
 242 prepare a schedule of appearances before the board based on
 243 petitions timely filed with him or her. The clerk shall notify
 244 each petitioner of the scheduled time of his or her appearance
 245 no less than 25 calendar days prior to the day of such scheduled
 246 appearance. Upon receipt of this notification, the petitioner
 247 shall have the right to reschedule the hearing an unlimited
 248 number of times for the failure of the property appraiser to
 249 comply with the requirements of s. 194.011(4)(b). The petitioner

250 shall also have the right to reschedule the hearing a single
 251 time by submitting to the clerk of the governing body of the
 252 county a written request to reschedule, no less than 5 calendar
 253 days before the day of the originally scheduled hearing.
 254 Additional rescheduling of the hearing may be granted to the
 255 taxpayer upon receipt of an affidavit from a physician which
 256 states a medical reason as to why the petitioner needs to
 257 reschedule the hearing. A copy of the property record card
 258 containing relevant information used in computing the taxpayer's
 259 current assessment shall be included with such notice, if said
 260 card was requested by the taxpayer. Such request shall be made
 261 by checking an appropriate box on the petition form. No
 262 petitioner shall be required to wait for more than 4 hours from
 263 the scheduled time; and, if his or her petition is not heard in
 264 that time, the petitioner may, at his or her option, report to
 265 the chairperson of the meeting that he or she intends to leave;
 266 and, if he or she is not heard immediately, the petitioner's
 267 hearing shall be rescheduled for a time reserved exclusively for
 268 the petitioner ~~administrative remedies will be deemed to be~~
 269 ~~exhausted, and he or she may seek further relief as he or she~~
 270 ~~deems appropriate.~~ Failure on three occasions with respect to
 271 any single tax year to convene at the scheduled time of meetings
 272 of the board shall constitute grounds for removal from office by
 273 the Governor for neglect of duties.

274 Section 7. Subsection (2) of section 194.034, Florida
 275 Statutes, is amended to read:

276 194.034 Hearing procedures; rules.--

277 (2) In each case, except when a complaint is withdrawn by
278 the petitioner or is acknowledged as correct by the property
279 appraiser, the value adjustment board shall render a written
280 decision. All such decisions shall be issued within 20 calendar
281 days of the last day the board is in session under s. 194.032.
282 The decision of the board shall contain findings of fact and
283 conclusions of law and shall include reasons for upholding or
284 overturning the determination of the property appraiser. If the
285 determination of the property appraiser is overturned, the board
286 shall order the refunding of the filing fee required by s.
287 194.013. When a special magistrate has been appointed, the
288 recommendations of the special magistrate shall be considered by
289 the board. The clerk, upon issuance of the decisions, shall, on
290 a form provided by the Department of Revenue, notify by first-
291 class mail each taxpayer, the property appraiser, and the
292 department of the decision of the board.

293 Section 8. Subsection (3) is added to section 194.192,
294 Florida Statutes, to read:

295 194.192 Costs; interest on unpaid taxes; penalty; attorney
296 fees.--

297 (3) If the court finds that the amount owed by the
298 taxpayer is less than the amount of tax paid, the court shall
299 enter judgment against the appraiser at the rate of 12 percent
300 per year from the date of payment. If the final assessment
301 established by the court is lower than the value assessed by the
302 property appraiser by more than 10 percent, the court shall
303 assess and award reasonable attorney fees to the taxpayer.

304 Section 9. Section 194.301, Florida Statutes, is amended
305 to read:

306 194.301 Presumption of correctness.--In any administrative
307 ~~or judicial~~ action in which a taxpayer challenges an ad valorem
308 tax assessment of value, the property appraiser shall have the
309 burden of providing by clear and convincing evidence that the
310 assessment is correct. In any judicial action, the burden of
311 proof shall be upon the party initiating the action ~~appraiser's~~
312 ~~assessment shall be presumed correct. This presumption of~~
313 ~~correctness is lost if the taxpayer shows by a preponderance of~~
314 ~~the evidence that either the property appraiser has failed to~~
315 ~~consider properly the criteria in s. 193.011 or if the property~~
316 ~~appraiser's assessment is arbitrarily based on appraisal~~
317 ~~practices which are different from the appraisal practices~~
318 ~~generally applied by the property appraiser to comparable~~
319 ~~property within the same class and within the same county. If~~
320 ~~the presumption of correctness is lost, the taxpayer shall have~~
321 ~~the burden of proving by a preponderance of the evidence that~~
322 ~~the appraiser's assessment is in excess of just value. If the~~
323 ~~presumption of correctness is retained, the taxpayer shall have~~
324 ~~the burden of proving by clear and convincing evidence that the~~
325 ~~appraiser's assessment is in excess of just value. In no case~~
326 ~~shall the taxpayer have the burden of proving that the property~~
327 ~~appraiser's assessment is not supported by any reasonable~~
328 ~~hypothesis of a legal assessment. If the property appraiser's~~
329 ~~assessment is determined to be erroneous, the Value Adjustment~~
330 ~~Board or the court can establish the assessment if there exists~~
331 ~~competent, substantial evidence in the record, which~~

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332 ~~cumulatively meets the requirements of s. 193.011. If the record~~
333 ~~lacks competent, substantial evidence meeting the just value~~
334 ~~criteria of s. 193.011, the matter shall be remanded to the~~
335 ~~property appraiser with appropriate directions from the Value~~
336 ~~Adjustment Board or the court.~~

337 Section 10. This act shall take effect upon becoming a
338 law.