

1 A bill to be entitled
2 An act relating to just valuation of property; amending s.
3 193.011, F.S.; providing for consideration of zoning
4 changes and permits in determining the highest and best
5 use; revising the condition of property just valuation
6 factor; including cost of removal of tangible personal
7 property as a consideration in the net sale proceeds
8 factor; requiring property appraisers to use only market
9 rent in arriving at just value of certain income-producing
10 properties; providing a definition; providing
11 applicability; amending s. 193.016, F.S.; providing for
12 consideration of value adjustment board decisions for all
13 properties; creating s. 193.018, F.S.; authorizing owners
14 of certain properties to enter into deed-restriction
15 agreements with counties for certain purposes; requiring
16 property appraisers to consider deed-restriction
17 agreements in determining just value; providing for
18 payment of back taxes plus interest if the deed-
19 restriction agreement is terminated early; amending s.
20 194.011, F.S.; revising provisions relating to provision
21 of evidence by petitioners and property appraisers;
22 amending s. 194.013, F.S.; requiring value adjustment
23 boards to waive a petition filing fee for taxpayers
24 eligible for certain constitutional exemptions; amending
25 s. 194.015, F.S.; revising the membership of value
26 adjustment boards, appointment criteria, and quorum
27 requirements; amending s. 194.032, F.S.; providing for
28 criteria for rescheduling certain hearings under certain

29 | circumstances; amending s. 194.034, F.S.; requiring value
 30 | adjustment boards to order refund of certain filing fees
 31 | if a determination of a property appraiser is overturned;
 32 | amending s. 194.192, F.S.; providing for judgments against
 33 | property appraisers under certain circumstances; providing
 34 | for assessment and award of attorney fees to taxpayers
 35 | under certain circumstances; amending s. 194.301, F.S.;
 36 | requiring property appraisers to provide evidence of
 37 | correctness of assessments in certain actions; deleting
 38 | provisions providing a presumption of correctness of
 39 | property appraiser's assessments and imposing requirements
 40 | on taxpayers to prove assessments excessive; providing an
 41 | effective date.

42 |

43 | Be It Enacted by the Legislature of the State of Florida:

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45 | Section 1. Effective upon this act becoming a law and
 46 | applicable to assessments beginning January 1, 2008, section
 47 | 193.011, Florida Statutes, is amended to read:

48 | 193.011 Factors to consider in deriving just valuation.--

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

52 | (a)~~(1)~~ The present cash value of the property, which is
 53 | the amount a willing purchaser would pay a willing seller,
 54 | exclusive of reasonable fees and costs of purchase, in cash or
 55 | the immediate equivalent thereof in a transaction at arm's
 56 | length;

57 ~~(b)(2)~~ The highest and best use to which the property can
 58 be expected to be put in the immediate future and the present
 59 use of the property, taking into consideration any applicable
 60 judicial limitation, local or state land use regulation, or
 61 historic preservation ordinance, and any zoning changes and
 62 permits necessary to achieve the highest and best use, and
 63 considering any moratorium imposed by executive order, law,
 64 ordinance, regulation, resolution, or proclamation adopted by
 65 any governmental body or agency or the Governor when the
 66 moratorium or judicial limitation prohibits or restricts the
 67 development or improvement of property as otherwise authorized
 68 by applicable law. The applicable governmental body or agency or
 69 the Governor shall notify the property appraiser in writing of
 70 any executive order, ordinance, regulation, resolution, or
 71 proclamation it adopts imposing any such limitation, regulation,
 72 or moratorium;

73 ~~(c)(3)~~ The location of said property;

74 ~~(d)(4)~~ The quantity or size of said property;

75 ~~(e)(5)~~ The cost of said property and the present
 76 replacement value of any improvements thereon;

77 ~~(f)(6)~~ The condition of said property. When determining
 78 the condition of the property, the property appraiser shall
 79 consider physical deterioration, functional obsolescence, and
 80 external obsolescence;

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

82 ~~(h)(8)~~ The net proceeds of the sale of the property, as
 83 received by the seller, after deduction of all of the usual and
 84 reasonable fees and costs of the sale, including the costs and

85 expenses of financing, and allowance for unconventional or
 86 atypical terms of financing arrangements, and including the
 87 costs of removal of tangible personal property. When the net
 88 proceeds of the sale of any property are utilized, directly or
 89 indirectly, in the determination of just valuation of realty of
 90 the sold parcel or any other parcel under the provisions of this
 91 section, the property appraiser, for the purposes of such
 92 determination, shall exclude any portion of such net proceeds
 93 attributable to payments for household furnishings or other
 94 items of personal property.

95 (2) Notwithstanding the requirement that property
 96 appraisers consider all of the factors enumerated in subsection
 97 (1) in arriving at just valuation, property appraisers shall
 98 consider only the market rent from income-producing property in
 99 the case of all residential rental property and all commercial
 100 property that is leased to more than one legal entity, each of
 101 which conducts a separate business activity on the property. For
 102 purposes of this subsection, the term "market rent" means the
 103 most likely rent that an income-producing property would command
 104 if offered for lease in the open market.

105 Section 2. Section 193.016, Florida Statutes, is amended
 106 to read:

107 193.016 Property appraiser's assessment; effect of
 108 determinations by value adjustment board.--If the property
 109 appraiser's assessment of the same ~~items of tangible personal~~
 110 property in the previous year was adjusted by the value
 111 adjustment board and the decision of the board to reduce the
 112 assessment was not successfully appealed by the property

113 appraiser, the property appraiser shall consider the reduced
114 value ~~values~~ determined by the value adjustment board in
115 assessing ~~the those items of tangible personal~~ property. If the
116 property appraiser adjusts upward the reduced value ~~values~~
117 previously determined by the value adjustment board, the
118 property appraiser shall assert additional basic and underlying
119 facts not properly considered by the value adjustment board as
120 the basis for the increased valuation notwithstanding the prior
121 adjustment by the board.

122 Section 3. Section 193.018, Florida Statutes, is created
123 to read:

124 193.018 Assessment of deed-restricted property.--

125 (1) The owner of residential rental property, multiunit
126 commercial rental property, property used as a marina,
127 waterfront property used exclusively for commercial fishing
128 purposes, or property rented for use by mobile homes may enter
129 into a deed-restriction agreement with the county to maintain
130 the property at its current use for a period of at least 5
131 years.

132 (2) The property appraiser shall consider the deed-
133 restriction agreement in determining the just value of the
134 property.

135 (3) If, prior to the expiration of the deed-restriction
136 agreement, the property is not used for the purposes set forth
137 in the deed-restriction agreement, the deed-restriction
138 agreement shall be terminated and the property owner shall pay
139 to the county an amount equal to the additional taxes that would
140 have been paid in prior years had the deed-restriction agreement

141 not been in effect, plus 12 percent interest.

142 Section 4. Subsection (4) of section 194.011, Florida
 143 Statutes, is amended to read:

144 194.011 Assessment notice; objections to assessments.--

145 (4) (a) At least 15 days before the hearing, the petitioner
 146 shall provide to the property appraiser a list of evidence to be
 147 presented at the hearing, together with copies of all
 148 documentation to be considered by the value adjustment board and
 149 a summary of evidence to be presented by witnesses.

150 (b) At least 15 ~~No later than 7~~ days before the hearing,
 151 ~~if the petitioner has provided the information required under~~
 152 ~~paragraph (a), and if requested in writing by the petitioner,~~
 153 the property appraiser shall provide to the petitioner a list of
 154 evidence to be presented at the hearing, together with copies of
 155 all documentation to be considered by the value adjustment board
 156 and a summary of evidence to be presented by witnesses. The
 157 evidence list must contain the property record card if provided
 158 by the clerk. Failure of the property appraiser to timely comply
 159 with the requirements of this paragraph shall result in a
 160 rescheduling of the hearing.

161 Section 5. Subsection (2) of section 194.013, Florida
 162 Statutes, is amended to read:

163 194.013 Filing fees for petitions; disposition; waiver.--

164 (2) The value adjustment board shall waive the filing fee
 165 with respect to a petition filed by a taxpayer who is eligible
 166 to receive one or more of the exemptions under s. 6(c), (f), or
 167 (g), Art. VII of the State Constitution, regardless of whether
 168 the taxpayer's local government grants the additional local

169 homestead exemptions. The filing fee also shall be waived for a
 170 taxpayer who demonstrates at the time of filing, by an
 171 appropriate certificate or other documentation issued by the
 172 Department of Children and Family Services and submitted with
 173 the petition, that the petitioner is then an eligible recipient
 174 of temporary assistance under chapter 414.

175 Section 6. Section 194.015, Florida Statutes, is amended
 176 to read:

177 194.015 Value adjustment board.--

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

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

182 a. One member must own a homestead property within the
 183 county.

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

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

188 2. ~~as elected from the membership of the board of said~~
 189 ~~governing body,~~ One of such appointees ~~whom~~ shall be elected
 190 chairperson.

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

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

195 2. One member must be eligible to receive one or more of
 196 the exemptions under s. 6(c), (f), or (g), Art. VII of the State

197 Constitution, regardless of whether the taxpayer's local
 198 government grants the additional local homestead exemptions.

199 3. An appointee may not be a member or an employee of any
 200 taxing authority as elected from the membership of the school
 201 board. The members of the board may be temporarily replaced by
 202 other members of the respective boards on appointment by their
 203 respective chairpersons.

204 (3) Any three members shall constitute a quorum of the
 205 board, ~~except that each quorum must include at least one member~~
 206 ~~of said governing board and at least one member of the school~~
 207 ~~board,~~ and no meeting of the board shall take place unless a
 208 quorum is present.

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

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

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

219 (b) Meetings ~~No meeting~~ of the board may not shall take
 220 place unless counsel to the board is present. However, counsel
 221 for the property appraiser shall not be required when the county
 222 attorney represents only the board at the board hearings, even
 223 though the county attorney may represent the property appraiser
 224 in other matters or at a different time.

225 (7) Two-fifths of the expenses of the board shall be borne
226 by the district school board and three-fifths by the district
227 county commission.

228 Section 7. Subsection (2) of section 194.032, Florida
229 Statutes, is amended to read:

230 194.032 Hearing purposes; timetable.--

231 (2) The clerk of the governing body of the county shall
232 prepare a schedule of appearances before the board based on
233 petitions timely filed with him or her. The clerk shall notify
234 each petitioner of the scheduled time of his or her appearance
235 no less than 25 calendar days prior to the day of such scheduled
236 appearance. Upon receipt of this notification, the petitioner
237 shall have the right to reschedule the hearing for the failure
238 of the property appraiser to comply with the requirements of s.
239 194.011(4) (b). The hearing shall be rescheduled no sooner than
240 15 days after the property appraiser complies with the
241 requirements of s. 194.011(4) (b). The petitioner shall also have
242 the right to reschedule the hearing a single time by submitting
243 to the clerk of the governing body of the county a written
244 request to reschedule, no less than 5 calendar days before the
245 day of the originally scheduled hearing. Additional rescheduling
246 of the hearing may be granted to the taxpayer upon receipt of an
247 affidavit from a physician that states a medical reason as to
248 why the petitioner needs to reschedule the hearing. A copy of
249 the property record card containing relevant information used in
250 computing the taxpayer's current assessment shall be included
251 with such notice, if said card was requested by the taxpayer.
252 Such request shall be made by checking an appropriate box on the

253 petition form. No petitioner shall be required to wait for more
 254 than 2 4 hours from the scheduled time; and, if his or her
 255 petition is not heard in that time, the petitioner may, at his
 256 or her option, report to the chairperson of the meeting that he
 257 or she intends to leave; and, if he or she is not heard
 258 immediately, the petitioner's hearing shall be rescheduled for a
 259 time reserved exclusively for the petitioner ~~administrative~~
 260 ~~remedies will be deemed to be exhausted, and he or she may seek~~
 261 ~~further relief as he or she deems appropriate.~~ Failure on three
 262 occasions with respect to any single tax year to convene at the
 263 scheduled time of meetings of the board shall constitute grounds
 264 for removal from office by the Governor for neglect of duties.

265 Section 8. Subsection (2) of section 194.034, Florida
 266 Statutes, is amended to read:

267 194.034 Hearing procedures; rules.--

268 (2) In each case, except when a complaint is withdrawn by
 269 the petitioner or is acknowledged as correct by the property
 270 appraiser, the value adjustment board shall render a written
 271 decision. All such decisions shall be issued within 20 calendar
 272 days of the last day the board is in session under s. 194.032.
 273 The decision of the board shall contain findings of fact and
 274 conclusions of law and shall include reasons for upholding or
 275 overturning the determination of the property appraiser. If the
 276 determination of the property appraiser is overturned, the board
 277 shall order the refunding of the filing fee required by s.
 278 194.013. When a special magistrate has been appointed, the
 279 recommendations of the special magistrate shall be considered by
 280 the board. The clerk, upon issuance of the decisions, shall, on

281 a form provided by the Department of Revenue, notify by first-
 282 class mail each taxpayer, the property appraiser, and the
 283 department of the decision of the board.

284 Section 9. Subsection (3) is added to section 194.192,
 285 Florida Statutes, to read:

286 194.192 Costs; interest on unpaid taxes; penalty; attorney
 287 fees.--

288 (3) If the court finds that the amount owed by the
 289 taxpayer is less than the amount of tax paid, the court shall
 290 enter judgment against the appraiser for the difference and for
 291 interest on the difference at the rate of 12 percent per year
 292 from the date of payment. If the final assessment established by
 293 the court is lower than the value assessed by the property
 294 appraiser by more than 10 percent, the court shall assess and
 295 award reasonable attorney fees to the taxpayer.

296 Section 10. Section 194.301, Florida Statutes, is amended
 297 to read:

298 194.301 Presumption of correctness.--In any administrative
 299 ~~or judicial~~ action in which a taxpayer challenges an ad valorem
 300 tax assessment of value, the property appraiser shall have the
 301 burden of providing by clear and convincing evidence that the
 302 assessment is correct. In any judicial action, the burden of
 303 proof shall be upon the party initiating the action ~~appraiser's~~
 304 ~~assessment shall be presumed correct. This presumption of~~
 305 ~~correctness is lost if the taxpayer shows by a preponderance of~~
 306 ~~the evidence that either the property appraiser has failed to~~
 307 ~~consider properly the criteria in s. 193.011 or if the property~~
 308 ~~appraiser's assessment is arbitrarily based on appraisal~~

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309 ~~practices which are different from the appraisal practices~~
310 ~~generally applied by the property appraiser to comparable~~
311 ~~property within the same class and within the same county. If~~
312 ~~the presumption of correctness is lost, the taxpayer shall have~~
313 ~~the burden of proving by a preponderance of the evidence that~~
314 ~~the appraiser's assessment is in excess of just value. If the~~
315 ~~presumption of correctness is retained, the taxpayer shall have~~
316 ~~the burden of proving by clear and convincing evidence that the~~
317 ~~appraiser's assessment is in excess of just value. In no case~~
318 ~~shall the taxpayer have the burden of proving that the property~~
319 ~~appraiser's assessment is not supported by any reasonable~~
320 ~~hypothesis of a legal assessment. If the property appraiser's~~
321 ~~assessment is determined to be erroneous, the Value Adjustment~~
322 ~~Board or the court can establish the assessment if there exists~~
323 ~~competent, substantial evidence in the record, which~~
324 ~~cumulatively meets the requirements of s. 193.011. If the record~~
325 ~~lacks competent, substantial evidence meeting the just value~~
326 ~~criteria of s. 193.011, the matter shall be remanded to the~~
327 ~~property appraiser with appropriate directions from the Value~~
328 ~~Adjustment Board or the court.~~

329 Section 11. This act shall take effect upon becoming a
330 law.