

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 | revising criteria for a presumption of correctness of ad  
 37 | valorem taxation assessments and the burden of proof in  
 38 | actions challenging such assessments; providing an  
 39 | effective date.

40 |

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

42 |

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

46 | 193.011 Factors to consider in deriving just valuation.--

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

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

55 | (b)~~(2)~~ The highest and best use to which the property can  
 56 | be expected to be put in the immediate future and the present

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

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

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

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

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

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

80 (h)~~(8)~~ The net proceeds of the sale of the property, as  
 81 received by the seller, after deduction of all of the usual and  
 82 reasonable fees and costs of the sale, including the costs and  
 83 expenses of financing, and allowance for unconventional or  
 84 atypical terms of financing arrangements, and including the

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

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

103 Section 2. Section 193.016, Florida Statutes, is amended  
 104 to read:

105 193.016 Property appraiser's assessment; effect of  
 106 determinations by value adjustment board.--If the property  
 107 appraiser's assessment of the same ~~items of tangible personal~~  
 108 property in the previous year was adjusted by the value  
 109 adjustment board and the decision of the board to reduce the  
 110 assessment was not successfully appealed by the property  
 111 appraiser, the property appraiser shall consider the reduced  
 112 value ~~values~~ determined by the value adjustment board in

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

120 Section 3. Section 193.018, Florida Statutes, is created  
 121 to read:

122 193.018 Assessment of deed-restricted property.--

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

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

133 (3) If, prior to the expiration of the deed-restriction  
 134 agreement, the property is not used for the purposes set forth  
 135 in the deed-restriction agreement, the deed-restriction  
 136 agreement shall be terminated and the property owner shall pay  
 137 to the county an amount equal to the additional taxes that would  
 138 have been paid in prior years had the deed-restriction agreement  
 139 not been in effect, plus 12 percent interest.

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

142 194.011 Assessment notice; objections to assessments.--

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

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

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

161 194.013 Filing fees for petitions; disposition; waiver.--

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

168 taxpayer who demonstrates at the time of filing, by an  
 169 appropriate certificate or other documentation issued by the  
 170 Department of Children and Family Services and submitted with  
 171 the petition, that the petitioner is then an eligible recipient  
 172 of temporary assistance under chapter 414.

173 Section 6. Section 194.015, Florida Statutes, is amended  
 174 to read:

175 194.015 Value adjustment board.--

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

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

180 a. One member must own a homestead property within the  
 181 county.

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

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

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

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

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

193 2. One member must be eligible to receive one or more of  
 194 the exemptions under s. 6(c), (f), or (g), Art. VII of the State  
 195 Constitution, regardless of whether the taxpayer's local

196 government grants the additional local homestead exemptions.

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

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

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

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

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

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



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

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

228           194.032 Hearing purposes; timetable.--

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

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

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

265 194.034 Hearing procedures; rules.--

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

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

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

284 194.192 Costs; interest on unpaid taxes; penalty; attorney  
 285 fees.--

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

294 Section 10. Section 194.301, Florida Statutes, is amended  
 295 to read:

296 194.301 Presumption of correctness and burden of proof in  
 297 ad valorem tax assessment challenges.--In any administrative or  
 298 judicial proceeding ~~action~~ in which a ~~taxpayer~~ ~~challenges~~ an ad  
 299 valorem tax assessment of value is challenged, the burden of  
 300 proof shall be upon the party initiating the proceeding and such  
 301 party shall have the burden of proving by a preponderance of the  
 302 evidence that the assessment, as established by the property  
 303 appraiser or the Value Adjustment Board, is incorrect. The  
 304 property appraiser's assessment shall be presumed correct,  
 305 except that if the Value Adjustment Board has established a  
 306 different assessment, the assessment of the Value Adjustment

307 Board shall be presumed correct. This presumption of correctness  
 308 is lost if the taxpayer shows by a preponderance of the evidence  
 309 that either the property appraiser has failed to comply with  
 310 uniform standards of professional appraisal practice in his or  
 311 her consideration of ~~consider properly~~ the criteria in s.  
 312 193.011 or if the property appraiser's assessment is arbitrarily  
 313 based on appraisal practices which are different from the  
 314 appraisal practices generally applied by the property appraiser  
 315 to comparable property within the same class and within the same  
 316 county. ~~If the presumption of correctness is lost, the taxpayer~~  
 317 ~~shall have the burden of proving by a preponderance of the~~  
 318 ~~evidence that the appraiser's assessment is in excess of just~~  
 319 ~~value. If the presumption of correctness is retained, the~~  
 320 ~~taxpayer shall have the burden of proving by clear and~~  
 321 ~~convincing evidence that the appraiser's assessment is in excess~~  
 322 ~~of just value.~~ In no case shall the taxpayer have the burden of  
 323 proving that the property appraiser's assessment is not  
 324 supported by any reasonable hypothesis of a legal assessment. If  
 325 the property appraiser's assessment is determined to be  
 326 erroneous, the Value Adjustment Board or the court can establish  
 327 the assessment if there exists competent, substantial evidence  
 328 in the record, which cumulatively meets the requirements of s.  
 329 193.011. If the record lacks competent, substantial evidence  
 330 meeting the just value criteria of s. 193.011, the matter shall  
 331 be remanded to the property appraiser with appropriate  
 332 directions from the Value Adjustment Board or the court.

333 Section 11. This act shall take effect upon becoming a  
 334 law.