

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 just valuation factor relating to the  
6 condition of property; including cost of removal of  
7 tangible personal property as a consideration in the net  
8 sale proceeds factor; requiring property appraisers to use  
9 only market rent in arriving at just value of certain  
10 income-producing properties; providing a definition;  
11 providing applicability; amending s. 193.016, F.S.;  
12 providing for consideration of value adjustment board  
13 decisions for all properties; creating s. 193.018, F.S.;  
14 authorizing owners of certain properties to enter into  
15 deed-restriction agreements with counties for certain  
16 purposes; requiring property appraisers to consider deed-  
17 restriction agreements in determining just value;  
18 providing for payment of back taxes plus interest if the  
19 deed-restriction agreement is terminated early; amending  
20 s. 194.011, F.S.; revising provisions relating to  
21 provision of evidence by petitioners and property  
22 appraisers; amending s. 194.013, F.S.; requiring value  
23 adjustment boards to waive a petition filing fee for  
24 taxpayers eligible for certain constitutional exemptions;  
25 amending s. 194.015, F.S.; revising the membership of  
26 value 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; amending s. 420.507,  
 39 | F.S.; correcting a cross-reference; providing an effective  
 40 | date.

41 |

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

43 |

44 | Section 1. Effective upon this act becoming a law and  
 45 | applicable to assessments beginning January 1, 2009, section  
 46 | 193.011, Florida Statutes, is amended to read:

47 | 193.011 Factors to consider in deriving just valuation.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

123 193.018 Assessment of deed-restricted property.--

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

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

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

140 not been in effect, plus 12 percent interest.

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

143 194.011 Assessment notice; objections to assessments.--

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

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

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

162 194.013 Filing fees for petitions; disposition; waiver.--

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

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

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

176 194.015 Value adjustment board.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

229           194.032 Hearing purposes; timetable.--

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

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

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

266 194.034 Hearing procedures; rules.--

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

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

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

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

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

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

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

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

334 Section 11. Subsection (46) of section 420.507, Florida  
335 Statutes, is amended to read:

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336           420.507 Powers of the corporation.--The corporation shall  
337 have all the powers necessary or convenient to carry out and  
338 effectuate the purposes and provisions of this part, including  
339 the following powers which are in addition to all other powers  
340 granted by other provisions of this part:

341           (46) To require, as a condition of financing a multifamily  
342 rental project, that an agreement be recorded in the official  
343 records of the county where the real property is located, which  
344 requires that the project be used for housing defined as  
345 affordable in s. 420.0004(3) by persons defined in s.  
346 420.0004(8), (10), (11), and (15). Such an agreement is a state  
347 land use regulation that limits the highest and best use of the  
348 property within the meaning of s. 193.011(1) (b)~~(2)~~.

349           Section 12. This act shall take effect upon becoming a  
350 law.