

By Senator Atwater

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1 A bill to be entitled
2 An act relating to property appraisal; amending s.
3 193.011, F.S.; revising factors used to determine the just
4 valuation of property; creating s. 193.018, F.S.;
5 authorizing owners of certain property to enter into deed-
6 restriction agreements with counties for certain purposes;
7 requiring the property appraiser to consider such
8 agreements in determining just value; providing for the
9 recapture of taxes and imposing interest under certain
10 circumstances; amending s. 194.011, F.S.; providing for
11 admissibility of certain evidence at hearings of the value
12 adjustment board under certain circumstances; amending s.
13 194.034, F.S.; establishing the exclusive authority of the
14 Department of Revenue to adopt rules governing the conduct
15 of hearings before value adjustment boards; amending s.
16 194.181, F.S.; revising criteria for plaintiffs to a tax
17 suit; prohibiting property appraisers from challenging the
18 constitutionality of laws; creating s. 194.182, F.S.;
19 providing criteria for the admissibility of evidence in
20 tax cases; amending s. 194.192, F.S.; requiring a court to
21 enter judgment for taxpayers for tax overpayments and
22 interest under certain circumstances; requiring a court to
23 assess and award reasonable attorney's fees against
24 property appraisers and to taxpayers under certain
25 circumstances; amending s. 194.301, F.S.; revising the
26 burden of proof in challenges to the property appraiser's
27 assessment of just value; deleting the presumption of
28 correctness and placing a burden of proof on the
29 appraiser; placing a burden of proof on the property

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30 appraiser in certain actions challenging a value
31 adjustment board's assessment of just value; specifying
32 the burden of proof for property appraisers in actions
33 challenging denial of an exemption or assessment
34 classification; providing legislative intent that the
35 taxpayer does not have the burden of proving that the
36 property appraiser's assessment is unsupported; amending
37 s. 195.087, F.S.; excluding certain amounts from a
38 property appraiser's budget; amending s. 196.161, F.S.;
39 requiring a property appraiser to record a notice of tax
40 lien against certain homestead property improperly
41 receiving a homestead exemption for a certain period;
42 prohibiting assessing persons taxes, penalties, and
43 interest for receiving a homestead exemption to which they
44 are entitled but improperly granted through a clerical
45 error or omission of the property appraiser; providing for
46 retroactive application; amending s. 192.0105, F.S.;
47 conforming a cross-reference; requesting the Taxation and
48 Budget Reform Commission to study property tax proceedings
49 and property tax disputes and to make recommendations to
50 the Legislature; providing effective dates.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Effective upon this act becoming a law and
55 applicable to assessments beginning January 1, 2009, section
56 193.011, Florida Statutes, is amended to read:

57 193.011 ~~Factors to consider in deriving~~ Just valuation of
58 property.--In arriving at the just valuation of property as

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59 required under s. 4, Art. VII of the State Constitution, the
60 property appraiser shall take into consideration the following
61 factors:

62 (1) The present ~~cash~~ value of the property, which is the
63 amount a willing purchaser would pay a willing seller, exclusive
64 of reasonable fees and costs of purchase and conditions precedent
65 to the sale which require zoning changes and permits, in cash or
66 the immediate equivalent ~~thereof~~ in a transaction carried out at
67 arm's length;

68 (2) The highest and best use to which the property can be
69 expected to be put in the immediate future and the present use of
70 the property, taking into consideration the legally permissible
71 use of the property, including any applicable judicial
72 limitation, local or state land use regulation, or historic
73 preservation ordinance; any zoning changes and permits necessary
74 to achieve the highest and best use; ~~and considering~~ any
75 moratorium imposed by executive order, law, ordinance,
76 regulation, resolution, or proclamation adopted by any
77 governmental body or agency or the Governor if ~~when~~ the
78 moratorium or judicial limitation prohibits or restricts the
79 development or improvement of the property as otherwise
80 authorized by applicable law. The applicable governmental body or
81 agency or the Governor shall notify the property appraiser in
82 writing of any executive order, ordinance, regulation,
83 resolution, or proclamation it adopts imposing any such
84 limitation, regulation, or moratorium. ~~†~~

85 (3) The location of the ~~said~~ property. ~~†~~

86 (4) The quantity or size of the ~~said~~ property. ~~†~~

87 (5) The cost of the ~~said~~ property, ~~and~~ the present

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88 replacement value of the property, and any improvements to the
89 property taking into account the external physical deterioration
90 and functional obsolescence of the property. ~~thereon;~~

91 (6) The condition of the said property.~~;~~

92 (7) The income from the said property.~~;~~ and

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

106 Section 2. Section 193.018, Florida Statutes, is created to
107 read:

108 193.018 Valuation of deed-restricted property.--

109 (1) The owner of any residential rental property, multiunit
110 commercial rental property, property used as a marina, waterfront
111 property used exclusively for commercial fishing purposes, or
112 property rented for mobile home use may enter into a
113 deed-restriction agreement with the county to maintain the
114 property at its current use for a period of at least 5 years.

115 (2) The property appraiser shall consider the
116 deed-restriction agreement in determining the just value of the

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117 property.

118 (3) If, prior to the expiration of the deed-restriction
119 agreement, the property is used for purposes other than those set
120 forth in the agreement, the deed-restriction agreement shall be
121 terminated and the property owner shall pay to the county an
122 amount equal to any additional taxes that would have been
123 assessed in prior years had the agreement not been in effect,
124 plus interest at the rate of 12 percent per year on the amount of
125 additional taxes owed.

126 Section 3. Effective upon this act becoming a law and
127 applicable to petitions filed on or after January 1, 2009,
128 paragraph (c) is added to subsection (4) of section 194.011,
129 Florida Statutes, to read:

130 194.011 Assessment notice; objections to assessments.--

131 (4)

132 (c) Any evidence to be presented at the hearing pursuant to
133 this subsection shall be admissible and shall be considered by
134 the value adjustment board or special magistrate regardless of
135 whether such evidence was previously produced at the request of
136 the petitioner or the property appraiser.

137 Section 4. Subsection (1) of section 194.034, Florida
138 Statutes, is amended to read:

139 194.034 Hearing procedures; rules.--

140 (1)~~(a)~~ Petitioners before the value adjustment board may be
141 represented by an attorney or agent and present testimony and
142 other evidence. The property appraiser or his or her authorized
143 representatives may be represented by an attorney in defending
144 the property appraiser's assessment or opposing an exemption and
145 may present testimony and other evidence. The property appraiser,

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146 each petitioner, and all witnesses shall be required, upon the
147 request of either party, to testify under oath as administered by
148 the chairperson of the board. ~~Hearings shall be conducted in the~~
149 ~~manner prescribed by rules of the department, which rules shall~~
150 ~~include the right of cross-examination of any witness.~~

151 (a) ~~(b)~~ This section does not ~~Nothing herein shall~~ preclude
152 an aggrieved taxpayer from contesting his or her assessment under
153 part II of this chapter in the manner provided by s. 194.171,
154 whether or not he or she has initiated an action pursuant to this
155 part s. 194.011.

156 (b) ~~(c)~~ The Department of Revenue has the exclusive
157 authority to adopt rules governing the conduct of hearings before
158 the board and all related matters arising under this part. Such
159 rules may account for differences between counties that use the
160 services of a special magistrate and counties that do not. The
161 rules must ~~shall~~ provide that ~~no~~ evidence ~~shall~~ be considered by
162 the board only ~~except~~ when presented during the time scheduled
163 for the petitioner's hearing or at a time when the petitioner has
164 been given reasonable notice; that a verbatim record of the
165 proceedings ~~shall~~ be made; that, ~~and~~ proof of any documentary
166 evidence presented ~~shall~~ be preserved and made available to the
167 Department of Revenue, if requested; and that further judicial
168 proceedings ~~shall~~ be as provided in s. 194.036.

169 (c) ~~(d)~~ A ~~Notwithstanding the provisions of this subsection,~~
170 ~~no~~ petitioner may not present for consideration and, ~~nor may~~ a
171 board or special magistrate may not accept for consideration,
172 testimony or other evidentiary materials that were requested of
173 the petitioner in writing by the property appraiser of which the
174 petitioner had knowledge and denied to the property appraiser.

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175 ~~(d)(e)~~ Chapter 120 does not apply to hearings of the value
176 adjustment board.

177 ~~(e)(f)~~ An assessment may not be contested until a return
178 required by s. 193.052 has been filed.

179 Section 5. Effective upon this act becoming a law and
180 applicable to actions pending or filed on or after January 1,
181 2009, subsection (1) of section 194.181, Florida Statutes, is
182 amended, and subsection (7) is added to that section, to read:

183 194.181 Parties to a tax suit.--

184 (1) The plaintiff in any tax suit shall be:

185 (a) The taxpayer or other person contesting the assessment
186 of any tax that, ~~the payment of which~~ he or she is responsible
187 for payment under law a statute or a person who is responsible
188 ~~for the entire tax payment pursuant to a contract; and has the~~
189 ~~written consent of the property owner, or~~

190 (b) The condominium association, cooperative association,
191 or homeowners' association, as defined in s. 723.075, which
192 operates the units subject to the assessment; or

193 ~~(c)(b)~~ The property appraiser pursuant to s. 194.036.

194 (7) A property appraiser, in his or her official capacity,
195 may not challenge the constitutionality of any law as a plaintiff
196 or defendant in any action, whether in an affirmative or
197 defensive posture.

198 Section 6. Effective upon this act becoming a law and
199 applicable to actions filed on or after January 1, 2009, section
200 194.182, Florida Statutes, is created to read:

201 194.182 Admissibility of evidence in tax suits.--The
202 admissibility of evidence in all actions contesting a tax
203 assessment shall be governed by the Florida Rules of Evidence,

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204 and a failure to have previously produced evidence at the request
205 of the property appraiser prior to a judicial proceeding does not
206 provide grounds for denying the admissibility of that evidence.

207 Section 7. Effective upon this act becoming a law and
208 applicable to actions filed on or after January 1, 2009, section
209 194.192, Florida Statutes, is amended to read:

210 194.192 Costs; interest on unpaid or overpaid taxes;
211 penalty; attorneys fees.--

212 (1) In any suit involving the assessment or collection of
213 any tax, the court shall assess all costs.

214 (2) If the court finds that the amount of tax owed by the
215 taxpayer is greater than the amount the taxpayer has in good
216 faith admitted and paid, it shall enter judgment against the
217 taxpayer for the deficiency and for interest on the deficiency at
218 the rate of 12 percent per year from the date the tax became
219 delinquent.

220 (3) If the court ~~it~~ finds that the amount of tax which the
221 taxpayer has admitted ~~to be~~ owing is grossly disproportionate to
222 the amount of tax found to be due and that the taxpayer's
223 admission was not made in good faith, the court shall also assess
224 a penalty at the rate of 10 percent of the deficiency per year
225 from the date the tax became delinquent.

226 (4) If the court finds that the amount of tax owed by the
227 taxpayer is less than the amount of tax paid, it shall enter
228 judgment against the property appraiser for the amount of the
229 difference and for interest on the amount of the difference at
230 the rate of 12 percent per year from the date of payment.

231 (5) If the final assessment determined by the court is
232 lower than the value assessed by the property appraiser by more

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233 than 10 percent, the court shall award reasonable attorney's fees
234 to the taxpayer.

235 Section 8. Section 194.301, Florida Statutes, is amended to
236 read:

237 194.301 Burden of proof in assessment challenges
238 ~~Presumption of correctness.--~~

239 (1) In an any administrative or judicial action in which a
240 taxpayer challenges an ad valorem tax assessment of just value,
241 the property appraiser has the burden of proving that his or her
242 assessment complies with s. 193.011 and professionally accepted
243 appraisal practices, including mass appraisal if appropriate, in
244 which case the appraiser's assessment shall be presumed correct.
245 If the appraiser meets that burden, the taxpayer has the burden
246 of proving by a preponderance of the evidence that the assessment
247 is in excess of just value, or that the ~~This presumption of~~
248 ~~correctness is lost if the taxpayer shows by a preponderance of~~
249 ~~the evidence that either the property appraiser has failed to~~
250 ~~consider properly the criteria in s. 193.011 or if the property~~
251 ~~appraiser's assessment is arbitrarily based on appraisal~~
252 ~~practices that which are different from the appraisal practices~~
253 ~~generally applied by the property appraiser to comparable~~
254 ~~property within the same class and within the same county. If the~~
255 ~~presumption of correctness is lost, the taxpayer shall have the~~
256 ~~burden of proving by a preponderance of the evidence that the~~
257 ~~appraiser's assessment is in excess of just value. If the~~
258 ~~presumption of correctness is retained, the taxpayer shall have~~
259 ~~the burden of proving by clear and convincing evidence that the~~
260 ~~appraiser's assessment is in excess of just value. In no case~~
261 ~~shall the taxpayer have the burden of proving that the property~~

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262 ~~appraiser's assessment is not supported by any reasonable~~
263 ~~hypothesis of a legal assessment.~~

264 (2) In a judicial action in which the property appraiser
265 challenges the value adjustment board's assessment of just value,
266 the property appraiser has the burden of proving by a
267 preponderance of the evidence that the board's assessment is less
268 than just value. If the property appraiser's assessment is
269 determined to be erroneous, the value adjustment board or the
270 court may ~~can~~ establish the assessment if there is ~~exists~~
271 competent, substantial evidence in the record, which cumulatively
272 meets the requirements of s. 193.011 and professionally accepted
273 appraisal practices. If the record lacks competent, substantial
274 evidence ~~meeting the just value criteria of s. 193.011,~~ the
275 matter shall be remanded to the property appraiser with
276 appropriate directions from the value adjustment board or the
277 court.

278 (3) In an administrative or judicial action in which a
279 denial of an exemption or assessment classification is
280 challenged, the property appraiser has the burden of proving that
281 his or her denial complies with the applicable laws governing
282 such exemption or assessment classification.

283 Section 9. It is the express intent of the Legislature that
284 the taxpayer not have the burden of proving that the property
285 appraiser's assessment is not supported by any reasonable
286 hypothesis of a legal assessment and that court holdings setting
287 out such a standard were expressly rejected by the adoption of
288 chapter 97-85, Laws of Florida. It is the further intent of the
289 Legislature that court opinions published since 1997 citing the
290 "every reasonable hypothesis standard" are expressly rejected to

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291 the extent they are cited as interpretative of legislative
292 intent.

293 Section 10. Subsection (1) of section 195.087, Florida
294 Statutes, is amended to read:

295 195.087 Property appraisers and tax collectors to submit
296 budgets to Department of Revenue.--

297 (1) ~~(a)~~ On or before June 1 of each year, every property
298 appraiser, regardless of the form of county government, shall
299 submit to the Department of Revenue a budget request for the
300 operation of the property appraiser's office for the ensuing
301 fiscal year beginning October 1. The budget may not include any
302 amount to be used by the property appraiser's office to challenge
303 a law of this state.

304 (a) The property appraiser shall submit a ~~his or her~~ budget
305 request in the manner and form required by the department. A copy
306 ~~of such budget~~ shall be furnished at the same time to the board
307 of county commissioners. The department shall, upon proper notice
308 to the county commission and property appraiser, review the
309 budget request and may amend or change the budget request ~~as it~~
310 ~~deems necessary~~, in order to ensure that the budget is ~~be~~ neither
311 inadequate nor excessive. On or before July 15, the department
312 shall notify the property appraiser and the board of county
313 commissioners of its tentative budget amendments and changes.
314 Prior to August 15, the property appraiser and the board of
315 county commissioners may submit additional information or
316 testimony to the department respecting the budget request. On or
317 before August 15, the department shall make its final budget
318 amendments or changes to the budget and shall provide notice
319 thereof to the property appraiser and board of county

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320 commissioners.

321 (b) The Governor and Cabinet, sitting as the Administration
322 Commission, may hear appeals from the final action of the
323 department upon a written request being filed by the property
324 appraiser or the presiding officer of the county commission no
325 later than 15 days after the conclusion of the hearing held
326 pursuant to s. 200.065(2)(d). The Administration Commission may
327 amend the budget if it finds that any aspect of the budget is
328 unreasonable in light of the workload of the office of the
329 property appraiser ~~in the county under review~~. The budget request
330 as approved by the department and as amended by the commission
331 shall become the operating budget of the property appraiser for
332 the ensuing fiscal year beginning October 1, except that the
333 budget so approved may subsequently be amended under the same
334 procedure. After final approval, the property appraiser may not
335 ~~shall make no~~ transfer of funds between accounts without the
336 written approval of the department. However, all moneys received
337 by property appraisers in complying with chapter 119 shall be
338 accounted for in the same manner as provided ~~for~~ in s. 218.36,
339 for moneys received as county fees and commissions, and ~~any such~~
340 ~~moneys~~ may be used and expended in the same manner and to the
341 same extent as funds budgeted for the office without requiring a
342 ~~and no~~ budget amendment ~~shall be required~~.

343 Section 11. Effective upon this act becoming a law and
344 operating retroactively to January 1, 1998, paragraph (b) of
345 subsection (1) of section 196.161, Florida Statutes, is amended
346 to read:

347 196.161 Homestead exemptions; lien imposed on property of
348 person claiming exemption although not a permanent resident.--

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(1)

(b) In addition, ~~if upon determination by~~ the property appraiser determines that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, ~~it shall be the duty of~~ the property appraiser making such determination shall to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property that which is situated in this state is shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. If a person is otherwise entitled to a homestead exemption but the homestead exemption is improperly granted through a clerical mistake or an omission by the property appraiser, the person receiving the homestead exemption shall not be assessed back taxes, penalties, or interest on such property as provided in this paragraph. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest.

Section 12. Paragraph (f) of subsection (2) of section 192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.--There is created a Florida

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378 Taxpayer's Bill of Rights for property taxes and assessments to
379 guarantee that the rights, privacy, and property of the taxpayers
380 of this state are adequately safeguarded and protected during tax
381 levy, assessment, collection, and enforcement processes
382 administered under the revenue laws of this state. The Taxpayer's
383 Bill of Rights compiles, in one document, brief but comprehensive
384 statements that summarize the rights and obligations of the
385 property appraisers, tax collectors, clerks of the court, local
386 governing boards, the Department of Revenue, and taxpayers.
387 Additional rights afforded to payors of taxes and assessments
388 imposed under the revenue laws of this state are provided in s.
389 213.015. The rights afforded taxpayers to assure that their
390 privacy and property are safeguarded and protected during tax
391 levy, assessment, and collection are available only insofar as
392 they are implemented in other parts of the Florida Statutes or
393 rules of the Department of Revenue. The rights so guaranteed to
394 state taxpayers in the Florida Statutes and the departmental
395 rules include:

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

397 (f) The right, in value adjustment board proceedings, to
398 have all evidence presented and considered at a public hearing at
399 the scheduled time, to be represented by an attorney or agent, to
400 have witnesses sworn and cross-examined, and to examine property
401 appraisers or evaluators employed by the board who present
402 testimony (see ss. 194.034(1) ~~194.034(1)(a) and (c)~~ and (4), and
403 194.035(2)).

404 Section 13. The Legislature requests that the Taxation and
405 Budget Reform Commission conduct a study of the independence of
406 special magistrates in property tax proceedings and alternative

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407 methods for resolving property tax disputes and make
408 recommendations for legislation regarding such issues to the
409 President of the Senate and the Speaker of the House of
410 Representatives on or before January 1, 2009.

411 Section 14. Except as otherwise expressly provided in this
412 act and except for this section, which shall take effect upon
413 becoming a law, this act shall take effect July 1, 2008.