

By Senator Atwater

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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

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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 the
52 amount a willing purchaser would pay a willing seller, exclusive
53 of reasonable fees and costs of purchase, in cash or the
54 immediate equivalent thereof in a transaction at arm's 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 use
57 of the property, taking into consideration any applicable
58 judicial limitation, local or state land use regulation, or

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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 any
63 governmental body or agency or the Governor when the moratorium
64 or judicial limitation prohibits or restricts the development or
65 improvement of property as otherwise authorized by applicable
66 law. The applicable governmental body or agency or the Governor
67 shall notify the property appraiser in writing of any executive
68 order, ordinance, regulation, resolution, or proclamation it
69 adopts imposing any such limitation, regulation, or moratorium;

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

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

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

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

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

79 (h) ~~(8)~~ The net proceeds of the sale of the property, as
80 received by the seller, after deduction of all of the usual and
81 reasonable fees and costs of the sale, including the costs and
82 expenses of financing, and allowance for unconventional or
83 atypical terms of financing arrangements, and including the costs
84 of removal of tangible personal property. When the net proceeds
85 of the sale of any property are utilized, directly or indirectly,
86 in the determination of just valuation of realty of the sold
87 parcel or any other parcel under the provisions of this section,

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88 | the property appraiser, for the purposes of such determination,
89 | shall exclude any portion of such net proceeds attributable to
90 | payments for household furnishings or other items of personal
91 | property.

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

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

104 | 193.016 Property appraiser's assessment; effect of
105 | determinations by value adjustment board.--If the property
106 | appraiser's assessment of the same ~~items of tangible personal~~
107 | property in the previous year was adjusted by the value
108 | adjustment board and the decision of the board to reduce the
109 | assessment was not successfully appealed by the property
110 | appraiser, the property appraiser shall consider the reduced
111 | value values determined by the value adjustment board in
112 | assessing the ~~those items of tangible personal~~ property. If the
113 | property appraiser adjusts upward the reduced value values
114 | previously determined by the value adjustment board, the property
115 | appraiser shall assert additional basic and underlying facts not
116 | properly considered by the value adjustment board as the basis

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117 | for the increased valuation notwithstanding the prior adjustment
118 | by the board.

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

121 | 193.018 Assessment of deed-restricted property.--

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

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

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

138 | Section 4. Subsection (4) of section 194.011, Florida
139 | Statutes, is amended to read:

140 | 194.011 Assessment notice; objections to assessments.--

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

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

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

159 194.013 Filing fees for petitions; disposition; waiver.--

160 (2) The value adjustment board shall waive the filing fee
161 with respect to a petition filed by a taxpayer who is eligible to
162 receive one or more of the exemptions under s. 6(c), (f), or (g),
163 Art. VII of the State Constitution, regardless of whether the
164 taxpayer's local government grants the additional local homestead
165 exemptions. The filing fee also shall be waived for a taxpayer
166 who demonstrates at the time of filing, by an appropriate
167 certificate or other documentation issued by the Department of
168 Children and Family Services and submitted with the petition,
169 that the petitioner is then an eligible recipient of temporary
170 assistance under chapter 414.

171 Section 6. Section 194.015, Florida Statutes, is amended to
172 read:

173 194.015 Value adjustment board.--

174 (1) There is hereby created a value adjustment board for

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175 each county, which shall consist of five members.

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

178 a. One member must own a homestead property within the
179 county.

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

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

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

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

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

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

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

200 (3) Any three members shall constitute a quorum of the
201 board, ~~except that each quorum must include at least one member~~
202 ~~of said governing board and at least one member of the school~~
203 ~~board,~~ and no meeting of the board shall take place unless a

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204 quorum is present.

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

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

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

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

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

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

226 194.032 Hearing purposes; timetable.--

227 (2) The clerk of the governing body of the county shall
228 prepare a schedule of appearances before the board based on
229 petitions timely filed with him or her. The clerk shall notify
230 each petitioner of the scheduled time of his or her appearance no
231 less than 25 calendar days prior to the day of such scheduled
232 appearance. Upon receipt of this notification, the petitioner

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233 shall have the right to reschedule the hearing for the failure of
234 the property appraiser to comply with the requirements of s.
235 194.011(4) (b). The hearing shall be rescheduled no sooner than 15
236 days after the property appraiser complies with the requirements
237 of s. 194.011(4) (b). The petitioner shall also have the right to
238 reschedule the hearing a single time by submitting to the clerk
239 of the governing body of the county a written request to
240 reschedule, no less than 5 calendar days before the day of the
241 originally scheduled hearing. Additional rescheduling of the
242 hearing may be granted to the taxpayer upon receipt of an
243 affidavit from a physician that states a medical reason as to why
244 the petitioner needs to reschedule the hearing. A copy of the
245 property record card containing relevant information used in
246 computing the taxpayer's current assessment shall be included
247 with such notice, if said card was requested by the taxpayer.
248 Such request shall be made by checking an appropriate box on the
249 petition form. No petitioner shall be required to wait for more
250 than 2 4 hours from the scheduled time; and, if his or her
251 petition is not heard in that time, the petitioner may, at his or
252 her option, report to the chairperson of the meeting that he or
253 she intends to leave; and, if he or she is not heard immediately,
254 the petitioner's hearing shall be rescheduled for a time reserved
255 exclusively for the petitioner ~~administrative remedies will be~~
256 ~~deemed to be exhausted, and he or she may seek further relief as~~
257 ~~he or she deems appropriate.~~ Failure on three occasions with
258 respect to any single tax year to convene at the scheduled time
259 of meetings of the board shall constitute grounds for removal
260 from office by the Governor for neglect of duties.

261 Section 8. Subsection (2) of section 194.034, Florida

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262 Statutes, is amended to read:

263 194.034 Hearing procedures; rules.--

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

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

282 194.192 Costs; interest on unpaid taxes; penalty; attorney
283 fees.--

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

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291 award reasonable attorney fees to the taxpayer.

292 Section 10. Section 194.301, Florida Statutes, is amended
293 to read:

294 194.301 Presumption of correctness and burden of proof in
295 ad valorem tax assessment challenges.--In any administrative or
296 judicial proceeding ~~action~~ in which a ~~taxpayer~~ challenges an ad
297 valorem tax assessment of value is challenged, the burden of
298 proof shall be upon the party initiating the proceeding and such
299 party shall have the burden of proving by a preponderance of the
300 evidence that the assessment, as established by the property
301 appraiser or the Value Adjustment Board, is incorrect. The
302 property appraiser's assessment shall be presumed correct, except
303 that if the Value Adjustment Board has established a different
304 assessment, the assessment of the Value Adjustment Board shall be
305 presumed correct. This presumption of correctness is lost if the
306 taxpayer shows by a preponderance of the evidence that either the
307 property appraiser has failed to comply with uniform standards of
308 professional appraisal practice in his or her consideration of
309 ~~consider properly~~ the criteria in s. 193.011 or if the property
310 appraiser's assessment is arbitrarily based on appraisal
311 practices which are different from the appraisal practices
312 generally applied by the property appraiser to comparable
313 property within the same class and within the same county. ~~If the~~
314 ~~presumption of correctness is lost, the taxpayer shall have the~~
315 ~~burden of proving by a preponderance of the evidence that the~~
316 ~~appraiser's assessment is in excess of just value. If the~~
317 ~~presumption of correctness is retained, the taxpayer shall have~~
318 ~~the burden of proving by clear and convincing evidence that the~~
319 ~~appraiser's assessment is in excess of just value.~~ In no case

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320 shall the taxpayer have the burden of proving that the property
321 appraiser's assessment is not supported by any reasonable
322 hypothesis of a legal assessment. If the property appraiser's
323 assessment is determined to be erroneous, the Value Adjustment
324 Board or the court can establish the assessment if there exists
325 competent, substantial evidence in the record, which cumulatively
326 meets the requirements of s. 193.011. If the record lacks
327 competent, substantial evidence meeting the just value criteria
328 of s. 193.011, the matter shall be remanded to the property
329 appraiser with appropriate directions from the Value Adjustment
330 Board or the court.

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

333 420.507 Powers of the corporation.--The corporation shall
334 have all the powers necessary or convenient to carry out and
335 effectuate the purposes and provisions of this part, including
336 the following powers which are in addition to all other powers
337 granted by other provisions of this part:

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

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