

## ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

1                                   A bill to be entitled  
2       An act relating to ad valorem taxation; amending s.  
3       193.011, F.S.; clarifying factors that a property  
4       appraiser must consider in deriving just valuation;  
5       amending s. 193.461, F.S.; revising criteria for  
6       classifying agricultural lands; amending s. 194.011, F.S.;  
7       requiring the Department of Revenue to develop a uniform  
8       policies and procedures manual for use in proceedings  
9       before value adjustment boards; specifying availability  
10      requirements for such manual; amending s. 194.035, F.S.;  
11      requiring certain persons in certain counties to attend  
12      special magistrate training under certain circumstances;  
13      providing a fee exemption; requiring value adjustment  
14      boards to verify the qualifications of special magistrates  
15      prior to appointment; providing selection criteria;  
16      requiring the department to provide and conduct training  
17      for special magistrates; providing training requirements;  
18      requiring the department to charge tuition fees; providing  
19      for deposit of such fees; amending s. 194.037, F.S.;  
20      revising information required to be provided on the  
21      disclosure of tax impact form; providing legislative  
22      intent; specifying that taxpayers are precluded from  
23      having certain burdens of proof; amending s. 195.002,  
24      F.S.; conforming provisions to changes made by the act;  
25      amending s. 195.052, F.S.; specifying requirements for  
26      data to be published by the Department of Revenue;  
27      extending the publication period; providing an effective  
28      date.

ENROLLED  
 CS/HB 909, Engrossed 3

2008 Legislature

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

Section 1. Section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.--In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

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

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

57 | regulation, resolution, or proclamation it adopts imposing any  
 58 | such limitation, regulation, or moratorium;  
 59 |       (3) The location of said property;  
 60 |       (4) The quantity or size of said property;  
 61 |       (5) The cost of said property and the present replacement  
 62 | value of any improvements thereon;  
 63 |       (6) The condition of said property;  
 64 |       (7) The income from said property; and  
 65 |       (8) The net proceeds of the sale of the property, as  
 66 | received by the seller, after deduction of all of the usual and  
 67 | reasonable fees and costs of the sale, including the costs and  
 68 | expenses of financing, and allowance for unconventional or  
 69 | atypical terms of financing arrangements. When the net proceeds  
 70 | of the sale of any property are utilized, directly or  
 71 | indirectly, in the determination of just valuation of realty of  
 72 | the sold parcel or any other parcel under the provisions of this  
 73 | section, the property appraiser, for the purposes of such  
 74 | determination, shall exclude any portion of such net proceeds  
 75 | attributable to payments for household furnishings or other  
 76 | items of personal property.

77 |       Section 2. Paragraph (b) of subsection (3) of section  
 78 | 193.461, Florida Statutes, is amended to read:

79 |       193.461 Agricultural lands; classification and assessment;  
 80 | mandated eradication or quarantine program.--

81 |       (3)

82 |       (b) Subject to the restrictions set out in this section,  
 83 | only lands which are used primarily for bona fide agricultural  
 84 | purposes shall be classified agricultural. "Bona fide

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

85 agricultural purposes" means good faith commercial agricultural  
 86 use of the land. In determining whether the use of the land for  
 87 agricultural purposes is bona fide, the following factors may be  
 88 taken into consideration:

89 1. The length of time the land has been so used. ~~utilized.~~

90 2. Whether the use has been continuous. ~~†~~

91 3. The purchase price paid. ~~†~~

92 4. Size, as it relates to specific agricultural use, but  
 93 in no event shall a minimum acreage be required for agricultural  
 94 assessment. ~~†~~

95 5. Whether an indicated effort has been made to care  
 96 sufficiently and adequately for the land in accordance with  
 97 accepted commercial agricultural practices, including, without  
 98 limitation, fertilizing, liming, tilling, mowing, reforesting,  
 99 and other accepted agricultural practices. ~~†~~

100 6. Whether such land is under lease and, if so, the  
 101 effective length, terms, and conditions of the lease. ~~† and~~

102 7. Such other factors as may from time to time become  
 103 applicable.

104 Section 3. Subsection (5) of section 194.011, Florida  
 105 Statutes, is amended to read:

106 194.011 Assessment notice; objections to assessments.--

107 (5) (a) The department shall by rule prescribe uniform  
 108 procedures for hearings before the value adjustment board which  
 109 include requiring:

110 ~~1. (a)~~ Procedures for the exchange of information and  
 111 evidence by the property appraiser and the petitioner consistent  
 112 with s. 194.032. ~~† and~~

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

113           ~~2.(b)~~ That the value adjustment board hold an  
 114 organizational meeting for the purpose of making these  
 115 procedures available to petitioners.

116           (b) The department shall develop a uniform policies and  
 117 procedures manual that shall be used by value adjustment boards,  
 118 special magistrates, and taxpayers in proceedings before value  
 119 adjustment boards. The manual shall be made available, at a  
 120 minimum, on the department's website and on the existing  
 121 websites of the clerks of circuit courts.

122           Section 4. Section 194.015, Florida Statutes, is amended  
 123 to read:

124           194.015 Value adjustment board.--There is hereby created a  
 125 value adjustment board for each county, which shall consist of  
 126 two ~~three~~ members of the governing body of the county as elected  
 127 from the membership of the board of said governing body, one of  
 128 whom shall be elected chairperson, and one member ~~two members~~ of  
 129 the school board as elected from the membership of the school  
 130 board, and two citizen members, one of whom shall be appointed  
 131 by the governing body of the county and must own homestead  
 132 property within the county and one of whom must be appointed by  
 133 the school board and must own a business occupying commercial  
 134 space located within the school district. A citizen member may  
 135 not be a member or an employee of any taxing authority, and may  
 136 not be a person who represents property owners in any  
 137 administrative or judicial review of property taxes. The members  
 138 of the board may be temporarily replaced by other members of the  
 139 respective boards on appointment by their respective  
 140 chairpersons. Any three members shall constitute a quorum of the

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

141 board, except that each quorum must include at least one member  
 142 of said governing board, ~~and~~ at least one member of the school  
 143 board, and at least one citizen member and no meeting of the  
 144 board shall take place unless a quorum is present. Members of  
 145 the board may receive such per diem compensation as is allowed  
 146 by law for state employees if both bodies elect to allow such  
 147 compensation. The clerk of the governing body of the county  
 148 shall be the clerk of the value adjustment board. ~~The office of~~  
 149 ~~the county attorney may be counsel to the board unless the~~  
 150 ~~county attorney represents the property appraiser, in which~~  
 151 ~~instance~~ The board shall appoint private counsel who has  
 152 practiced law for over 5 years and who shall receive such  
 153 compensation as may be established by the board. The private  
 154 counsel may not represent the property appraiser, the tax  
 155 collector, any taxing authority, or any property owner in any  
 156 administrative or judicial review of property taxes. No meeting  
 157 of the board shall take place unless counsel to the board is  
 158 present. ~~However, counsel for the property appraiser shall not~~  
 159 ~~be required when the county attorney represents only the board~~  
 160 ~~at the board hearings, even though the county attorney may~~  
 161 ~~represent the property appraiser in other matters or at a~~  
 162 ~~different time.~~ Two-fifths of the expenses of the board shall be  
 163 borne by the district school board and three-fifths by the  
 164 district county commission.

165 Section 5. Section 194.035, Florida Statutes, is amended  
 166 to read:

167 194.035 Special magistrates; property evaluators.--

168 (1) In counties having a population of more than 75,000,

## ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

169 the board shall appoint special magistrates for the purpose of  
170 taking testimony and making recommendations to the board, which  
171 recommendations the board may act upon without further hearing.  
172 These special magistrates may not be elected or appointed  
173 officials or employees of the county but shall be selected from  
174 a list of those qualified individuals who are willing to serve  
175 as special magistrates. Employees and elected or appointed  
176 officials of a taxing jurisdiction or of the state may not serve  
177 as special magistrates. The clerk of the board shall annually  
178 notify such individuals or their professional associations to  
179 make known to them that opportunities to serve as special  
180 magistrates exist. The Department of Revenue shall provide a  
181 list of qualified special magistrates to any county with a  
182 population of 75,000 or less. Subject to appropriation, the  
183 department shall reimburse counties with a population of 75,000  
184 or less for payments made to special magistrates appointed for  
185 the purpose of taking testimony and making recommendations to  
186 the value adjustment board pursuant to this section. The  
187 department shall establish a reasonable range for payments per  
188 case to special magistrates based on such payments in other  
189 counties. Requests for reimbursement of payments outside this  
190 range shall be justified by the county. If the total of all  
191 requests for reimbursement in any year exceeds the amount  
192 available pursuant to this section, payments to all counties  
193 shall be prorated accordingly. If a county having a population  
194 less than 75,000 does not appoint a special magistrate to hear  
195 each petition, the person or persons designated to hear  
196 petitions before the value adjustment board or the attorney

## ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

197 appointed to advise the value adjustment board shall attend the  
198 training provided pursuant to subsection (3), regardless of  
199 whether the person would otherwise be required to attend, but  
200 shall not be required to pay the tuition fee specified in  
201 subsection (3). A special magistrate appointed to hear issues of  
202 exemptions and classifications shall be a member of The Florida  
203 Bar with no less than 5 years' experience in the area of ad  
204 valorem taxation. A special magistrate appointed to hear issues  
205 regarding the valuation of real estate shall be a state  
206 certified real estate appraiser with not less than 5 years'  
207 experience in real property valuation. A special magistrate  
208 appointed to hear issues regarding the valuation of tangible  
209 personal property shall be a designated member of a nationally  
210 recognized appraiser's organization with not less than 5 years'  
211 experience in tangible personal property valuation. A special  
212 magistrate need not be a resident of the county in which he or  
213 she serves. A special magistrate may not represent a person  
214 before the board in any tax year during which he or she has  
215 served that board as a special magistrate. Before appointing a  
216 special magistrate, a value adjustment board shall verify the  
217 special magistrate's qualifications. The value adjustment board  
218 shall ensure that the selection of special magistrates is based  
219 solely upon the experience and qualifications of the special  
220 magistrate and is not influenced by the property appraiser. The  
221 special magistrate shall accurately and completely preserve all  
222 testimony and, in making recommendations to the value adjustment  
223 board, shall include proposed findings of fact, conclusions of  
224 law, and reasons for upholding or overturning the determination



ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

225 of the property appraiser. ~~The board shall appoint special~~  
 226 ~~magistrates from the list so compiled prior to convening of the~~  
 227 ~~board.~~ The expense of hearings before magistrates and any  
 228 compensation of special magistrates shall be borne three-fifths  
 229 by the board of county commissioners and two-fifths by the  
 230 school board.

231 (2) The value adjustment board of each county may employ  
 232 qualified property appraisers or evaluators to appear before the  
 233 value adjustment board at that meeting of the board which is  
 234 held for the purpose of hearing complaints. Such property  
 235 appraisers or evaluators shall present testimony as to the just  
 236 value of any property the value of which is contested before the  
 237 board and shall submit to examination by the board, the  
 238 taxpayer, and the property appraiser.

239 (3) The department shall provide and conduct training for  
 240 special magistrates at least once each state fiscal year in at  
 241 least five locations throughout the state. Such training shall  
 242 emphasize the department's standard measures of value, including  
 243 the guidelines for real and tangible personal property.  
 244 Notwithstanding subsection (1), a person who has 3 years of  
 245 relevant experience and who has completed the training provided  
 246 by the department under this subsection may be appointed as a  
 247 special magistrate. The training shall be open to the public.  
 248 The department shall charge tuition fees to any person attending  
 249 this training in an amount sufficient to fund the department's  
 250 costs to conduct all aspects of the training. The department  
 251 shall deposit the fees collected into the Certification Program  
 252 Trust Fund pursuant to s. 195.002(2).

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

253 Section 6. Subsection (1) of section 194.037, Florida  
 254 Statutes, is amended to read:

255 194.037 Disclosure of tax impact.--

256 (1) After hearing all petitions, complaints, appeals, and  
 257 disputes, the clerk shall make public notice of the findings and  
 258 results of the board in at least a quarter-page size  
 259 advertisement of a standard size or tabloid size newspaper, and  
 260 the headline shall be in a type no smaller than 18 point. The  
 261 advertisement shall not be placed in that portion of the  
 262 newspaper where legal notices and classified advertisements  
 263 appear. The advertisement shall be published in a newspaper of  
 264 general paid circulation in the county. The newspaper selected  
 265 shall be one of general interest and readership in the  
 266 community, and not one of limited subject matter, pursuant to  
 267 chapter 50. The headline shall read: TAX IMPACT OF VALUE  
 268 ADJUSTMENT BOARD. The public notice shall list the members of  
 269 the value adjustment board and the taxing authorities to which  
 270 they are elected. The form shall show, in columnar form, for  
 271 each of the property classes listed under subsection (2), the  
 272 following information, with appropriate column totals:

273 (a) In the first column, the number of parcels for which  
 274 the board granted exemptions that had been denied or that had  
 275 not been acted upon by the property appraiser.

276 (b) In the second column, the number of parcels for which  
 277 petitions were filed concerning a property tax exemption.

278 (c) In the third column, the number of parcels for which  
 279 the board considered the petition and reduced the assessment  
 280 from that made by the property appraiser on the initial

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

281 assessment roll.

282 (d) In the fourth column, the number of parcels for which  
 283 petitions were filed but not considered by the board because  
 284 such petitions were withdrawn or settled prior to the board's  
 285 consideration.

286 (e)~~(d)~~ In the fifth ~~fourth~~ column, the number of parcels  
 287 for which petitions were filed requesting a change in assessed  
 288 value, including requested changes in assessment classification.

289 (f)~~(e)~~ In the sixth ~~fifth~~ column, the net change in  
 290 taxable value from the assessor's initial roll which results  
 291 from board decisions.

292 (g)~~(f)~~ In the seventh ~~sixth~~ column, the net shift in taxes  
 293 to parcels not granted relief by the board. The shift shall be  
 294 computed as the amount shown in column 6 ~~5~~ multiplied by the  
 295 applicable millage rates adopted by the taxing authorities in  
 296 hearings held pursuant to s. 200.065(2)(d) or adopted by vote of  
 297 the electors pursuant to s. 9(b) or s. 12, Art. VII of the State  
 298 Constitution, but without adjustment as authorized pursuant to  
 299 s. 200.065(6). If for any taxing authority the hearing has not  
 300 been completed at the time the notice required herein is  
 301 prepared, the millage rate used shall be that adopted in the  
 302 hearing held pursuant to s. 200.065(2)(c).

303 Section 7. It is the express intent of the Legislature  
 304 that a taxpayer shall never have the burden of proving that the  
 305 property appraiser's assessment is not supported by any  
 306 reasonable hypothesis of a legal assessment. It is the further  
 307 intent of the Legislature that any cases of law published since  
 308 1997 applying the every-reasonable-hypothesis burden of proof to

ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

309 uphold the property appraiser's assessment are expressly  
 310 rejected to the extent that they are interpretive of legislative  
 311 intent.

312 Section 8. Subsection (2) of section 195.002, Florida  
 313 Statutes, is amended to read:

314 195.002 Supervision by Department of Revenue.--

315 (2) In furtherance of its duty to conduct schools to  
 316 upgrade assessment skills and collection skills, the department  
 317 may establish by rule committees on admissions and  
 318 certification. ~~Additionally,~~ The department may also incur  
 319 reasonable expenses for hiring instructors, travel, office  
 320 operations, certificates of completion, badges or awards, and  
 321 food service incidental to conducting such schools and for  
 322 administering any certification program under s. 145.10, ~~or~~ s.  
 323 145.11, or s. 194.035. The department may charge a tuition fee  
 324 and an examination fee to any person who attends such a school  
 325 and may charge a fee to certify or recertify any person under  
 326 such a program. The department shall deposit such fees into the  
 327 Certification Program Trust Fund which is created in the State  
 328 Treasury. There shall be separate school accounts and program  
 329 accounts in the trust fund for property appraisers, ~~and for~~ tax  
 330 collectors, and special magistrates. The department shall use  
 331 money in the fund to pay such expenses.

332 Section 9. Section 195.052, Florida Statutes, is amended  
 333 to read:

334 195.052 Research and tabulation of data.--The department  
 335 shall conduct constant research and maintain accurate  
 336 tabulations of data and conditions existing as to ad valorem

## ENROLLED

CS/HB 909, Engrossed 3

2008 Legislature

337 taxation, shall annually publish such data as may be appropriate  
338 to facilitate fiscal policymaking, and shall annually make such  
339 recommendations to the Legislature as are necessary to ensure  
340 that property is valued according to its just value and is  
341 equitably taxed throughout the state. Such data shall include  
342 the annual percentage increase in total nonvoted ad valorem  
343 taxes levied by each city and county and shall include  
344 information on the distribution of ad valorem taxes levied among  
345 the various classifications of property, including homestead,  
346 nonhomestead residential, new construction, commercial, and  
347 industrial properties. Such data shall include the previous  
348 year's adopted millage rate, the current year's millage rate,  
349 and the current percentage increase in taxes levied above the  
350 rolled-back rate. Such data shall be published, at a minimum, on  
351 the department's website and on the websites of all property  
352 appraisers of this state, if available. Publication shall occur  
353 not later than 90 ~~60~~ days after receipt of extended rolls for  
354 all counties pursuant to s. 193.122(7).

355 Section 10. This act shall take effect September 1, 2008.