

1                   A bill to be entitled  
2           An act relating to just valuation of property; amending s.  
3           193.011, F.S.; revising the just valuation factors  
4           relating to the condition of property; including cost of  
5           removal of tangible personal property as a consideration  
6           in the net sale proceeds factor; requiring property  
7           appraisers to use only market rent in arriving at just  
8           value of certain income-producing properties; providing a  
9           definition; providing applicability; amending s. 193.016,  
10          F.S.; providing for consideration of value adjustment  
11          board decisions for all properties; creating s. 193.018,  
12          F.S.; authorizing owners of certain properties to enter  
13          into deed-restriction agreements with counties for certain  
14          purposes; requiring property appraisers to consider deed-  
15          restriction agreements in determining just value;  
16          providing for payment of back taxes plus interest if the  
17          deed-restriction agreement is terminated early; amending  
18          s. 194.011, F.S.; revising provisions relating to  
19          provision of evidence by petitioners and property  
20          appraisers; amending s. 194.032, F.S.; providing for  
21          criteria for rescheduling certain hearings under certain  
22          circumstances; amending s. 194.034, F.S.; requiring value  
23          adjustment boards to order refund of certain filing fees  
24          if a determination of a property appraiser is overturned;  
25          amending s. 194.192, F.S.; providing for judgments against  
26          property appraisers under certain circumstances; providing  
27          for assessment and award of attorney fees to taxpayers  
28          under certain circumstances; amending s. 194.301, F.S.;

29 |       revising criteria for a presumption of correctness of ad  
 30 |       valorem taxation assessments and the burden of proof in  
 31 |       actions challenging such assessments; amending s. 420.507,  
 32 |       F.S.; correcting a cross-reference; providing an effective  
 33 |       date.

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

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37 |       Section 1. Effective upon this act becoming a law and  
 38 |       applicable to assessments beginning January 1, 2009, section  
 39 |       193.011, Florida Statutes, is amended to read:

40 |       193.011 Factors to consider in deriving just valuation.--

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

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

49 |       (b)~~(2)~~ The highest and best use to which the property can  
 50 |       be expected to be put in the immediate future and the present  
 51 |       use of the property, taking into consideration the legally  
 52 |       permissible use of the property, including any applicable  
 53 |       judicial limitation, local or state land use regulation, or  
 54 |       historic preservation ordinance, and any zoning changes,  
 55 |       concurrency requirements, and permits necessary to achieve the  
 56 |       highest and best use, and considering any moratorium imposed by

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

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

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

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

70 ~~(f)(6)~~ The condition of said property. When determining  
71 the condition of the property, the property appraiser shall  
72 consider physical deterioration, functional obsolescence, and  
73 external obsolescence;

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

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

85 determination, shall exclude any portion of such net proceeds  
 86 attributable to payments for household furnishings or other  
 87 items of personal property.

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

98 Section 2. Section 193.016, Florida Statutes, is amended  
 99 to read:

100 193.016 Property appraiser's assessment; effect of  
 101 determinations by value adjustment board.--If the property  
 102 appraiser's assessment of the same ~~items of tangible personal~~  
 103 property in the previous year was adjusted by the value  
 104 adjustment board and the decision of the board to reduce the  
 105 assessment was not successfully appealed by the property  
 106 appraiser, the property appraiser shall consider the reduced  
 107 value values determined by the value adjustment board in  
 108 assessing the ~~those items of tangible personal~~ property. If the  
 109 property appraiser adjusts upward the reduced value values  
 110 previously determined by the value adjustment board, the  
 111 property appraiser shall assert additional basic and underlying  
 112 facts not properly considered by the value adjustment board as

113 the basis for the increased valuation notwithstanding the prior  
 114 adjustment by the board.

115 Section 3. Section 193.018, Florida Statutes, is created  
 116 to read:

117 193.018 Assessment of deed-restricted property.--

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

125 (2) The property appraiser shall consider the deed-  
 126 restriction agreement in determining the just value of the  
 127 property.

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

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

137 194.011 Assessment notice; objections to assessments.--

138 (4) (a) At least 15 days before the hearing, the petitioner  
 139 shall provide to the property appraiser a list of evidence to be  
 140 presented at the hearing, together with copies of all

141 | documentation to be considered by the value adjustment board and  
 142 | a summary of evidence to be presented by witnesses.

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

154 |       Section 5. Subsection (2) of section 194.032, Florida  
 155 | Statutes, is amended to read:

156 |       194.032 Hearing purposes; timetable.--

157 |       (2) The clerk of the governing body of the county shall  
 158 | prepare a schedule of appearances before the board based on  
 159 | petitions timely filed with him or her. The clerk shall notify  
 160 | each petitioner of the scheduled time of his or her appearance  
 161 | no less than 25 calendar days prior to the day of such scheduled  
 162 | appearance. Upon receipt of this notification, the petitioner  
 163 | shall have the right to reschedule the hearing for the failure  
 164 | of the property appraiser to comply with the requirements of s.  
 165 | 194.011(4) (b). The hearing shall be rescheduled no sooner than  
 166 | 15 days after the property appraiser complies with the  
 167 | requirements of s. 194.011(4) (b). The petitioner shall also have  
 168 | the right to reschedule the hearing a single time by submitting

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169 to the clerk of the governing body of the county a written  
170 request to reschedule, no less than 5 calendar days before the  
171 day of the originally scheduled hearing. Additional rescheduling  
172 of the hearing may be granted to the taxpayer upon receipt of an  
173 affidavit from a physician that states a medical reason as to  
174 why the petitioner needs to reschedule the hearing. A copy of  
175 the property record card containing relevant information used in  
176 computing the taxpayer's current assessment shall be included  
177 with such notice, if said card was requested by the taxpayer.  
178 Such request shall be made by checking an appropriate box on the  
179 petition form. No petitioner shall be required to wait for more  
180 than 2 4 hours from the scheduled time; and, if his or her  
181 petition is not heard in that time, the petitioner may, at his  
182 or her option, report to the chairperson of the meeting that he  
183 or she intends to leave; and, if he or she is not heard  
184 immediately, the petitioner's hearing shall be rescheduled for a  
185 time reserved exclusively for the petitioner ~~administrative~~  
186 ~~remedies will be deemed to be exhausted, and he or she may seek~~  
187 ~~further relief as he or she deems appropriate.~~ Failure on three  
188 occasions with respect to any single tax year to convene at the  
189 scheduled time of meetings of the board shall constitute grounds  
190 for removal from office by the Governor for neglect of duties.

191 Section 6. Subsection (2) of section 194.034, Florida  
192 Statutes, is amended to read:

193 194.034 Hearing procedures; rules.--

194 (2) In each case, except when a complaint is withdrawn by  
195 the petitioner or is acknowledged as correct by the property  
196 appraiser, the value adjustment board shall render a written

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197 decision. All such decisions shall be issued within 20 calendar  
 198 days of the last day the board is in session under s. 194.032.  
 199 The decision of the board shall contain findings of fact and  
 200 conclusions of law and shall include reasons for upholding or  
 201 overturning the determination of the property appraiser. If the  
 202 determination of the property appraiser is overturned, the board  
 203 shall order the refunding of the filing fee required by s.  
 204 194.013. When a special magistrate has been appointed, the  
 205 recommendations of the special magistrate shall be considered by  
 206 the board. The clerk, upon issuance of the decisions, shall, on  
 207 a form provided by the Department of Revenue, notify by first-  
 208 class mail each taxpayer, the property appraiser, and the  
 209 department of the decision of the board.

210 Section 7. Subsection (3) is added to section 194.192,  
 211 Florida Statutes, to read:

212 194.192 Costs; interest on unpaid taxes; penalty; attorney  
 213 fees.--

214 (3) If the court finds that the amount owed by the  
 215 taxpayer is less than the amount of tax paid, the court shall  
 216 enter judgment against the appraiser for the difference and for  
 217 interest on the difference at the rate of 12 percent per year  
 218 from the date of payment. If the final assessment established by  
 219 the court is lower than the value assessed by the property  
 220 appraiser by more than 10 percent, the court shall assess and  
 221 award reasonable attorney fees to the taxpayer.

222 Section 8. Section 194.301, Florida Statutes, is amended  
 223 to read:

224 194.301 Presumption of correctness and burden of proof in



225 ad valorem tax assessment challenges.--In any administrative or  
 226 judicial proceeding ~~action~~ in which a ~~taxpayer~~ challenges an ad  
 227 valorem tax assessment of value is challenged, the burden of  
 228 proof shall be upon the party initiating the proceeding and such  
 229 party shall have the burden of proving by a preponderance of the  
 230 evidence that the assessment, as established by the property  
 231 appraiser or the value adjustment board, is incorrect. The  
 232 property appraiser's assessment shall be presumed correct,  
 233 except that if the value adjustment board has established a  
 234 different assessment, the assessment of the value adjustment  
 235 board shall be presumed correct. This presumption of correctness  
 236 is lost if the taxpayer shows by a preponderance of the evidence  
 237 that either the property appraiser has failed to comply with  
 238 uniform standards of professional appraisal practice in his or  
 239 her consideration of ~~consider properly~~ the criteria in s.  
 240 193.011 or if the property appraiser's assessment is arbitrarily  
 241 based on appraisal practices which are different from the  
 242 appraisal practices generally applied by the property appraiser  
 243 to comparable property within the same class and within the same  
 244 county. ~~If the presumption of correctness is lost, the taxpayer~~  
 245 ~~shall have the burden of proving by a preponderance of the~~  
 246 ~~evidence that the appraiser's assessment is in excess of just~~  
 247 ~~value. If the presumption of correctness is retained, the~~  
 248 ~~taxpayer shall have the burden of proving by clear and~~  
 249 ~~convincing evidence that the appraiser's assessment is in excess~~  
 250 ~~of just value.~~ In no case shall the taxpayer have the burden of  
 251 proving that the property appraiser's assessment is not  
 252 supported by any reasonable hypothesis of a legal assessment. If

253 the property appraiser's assessment is determined to be  
 254 erroneous, the value adjustment board ~~Value Adjustment Board~~ or  
 255 the court can establish the assessment if there exists  
 256 competent, substantial evidence in the record, which  
 257 cumulatively meets the requirements of s. 193.011. If the record  
 258 lacks competent, substantial evidence meeting the just value  
 259 criteria of s. 193.011, the matter shall be remanded to the  
 260 property appraiser with appropriate directions from the value  
 261 adjustment board ~~Value Adjustment Board~~ or the court.

262 Section 9. Subsection (46) of section 420.507, Florida  
 263 Statutes, is amended to read:

264 420.507 Powers of the corporation.--The corporation shall  
 265 have all the powers necessary or convenient to carry out and  
 266 effectuate the purposes and provisions of this part, including  
 267 the following powers which are in addition to all other powers  
 268 granted by other provisions of this part:

269 (46) To require, as a condition of financing a multifamily  
 270 rental project, that an agreement be recorded in the official  
 271 records of the county where the real property is located, which  
 272 requires that the project be used for housing defined as  
 273 affordable in s. 420.0004(3) by persons defined in s.  
 274 420.0004(8), (10), (11), and (15). Such an agreement is a state  
 275 land use regulation that limits the highest and best use of the  
 276 property within the meaning of s. 193.011 (1) (b) (2).

277 Section 10. This act shall take effect upon becoming a  
 278 law.