

HB 7127

2010

1                   A bill to be entitled  
2           An act relating to working waterfront property; creating  
3           s. 193.704, F.S.; providing definitions; specifying  
4           property that is eligible for classification as working  
5           waterfront property; requiring the assessment of working  
6           waterfront property based on current use; requiring an  
7           application for classification of property as working  
8           waterfront property; authorizing a property appraiser to  
9           approve an application that is not filed by a certain  
10          deadline due to extenuating circumstances; providing for  
11          the waiver of annual application requirements; providing  
12          for the loss of classification upon a change of ownership  
13          or use; requiring that property owners notify the property  
14          appraiser of changes in use or ownership of property;  
15          imposing a penalty on a property owner who fails to notify  
16          the property appraiser of an event resulting in the  
17          unlawful or improper classification of property as working  
18          waterfront property; requiring the imposition of tax liens  
19          to recover penalties and interest; providing for the  
20          assessment of a portion of property within a working  
21          waterfront property which is not used as working  
22          waterfront property; requiring that a property appraiser  
23          make a list relating to applications to certify property  
24          as working waterfront property; providing an appeal  
25          process for an application that has been denied; amending  
26          s. 195.073, F.S.; providing for the classification of land  
27          as working waterfront property on an assessment roll;  
28          providing an alternate application deadline date for

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

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29 | calendar year 2010; providing for severability; providing  
 30 | emergency rulemaking authority for the Department of  
 31 | Revenue; providing for retroactive operation; providing an  
 32 | effective date.

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

36 | Section 1. Section 193.704, Florida Statutes, is created  
 37 | to read:

38 | 193.704 Working waterfront property; definitions;  
 39 | classification and assessment; denial of classification and  
 40 | appeal.-

41 | (1) DEFINITIONS.-For purposes of granting a working  
 42 | waterfront property classification under this section for  
 43 | January 1, 2010, and thereafter, the term:

44 | (a) "Accessible to the public" means routinely available  
 45 | to the public from sunrise to sunset, with or without charge,  
 46 | with appropriate accommodations, including, but not limited to,  
 47 | public parking or public boat ramps that are available for use  
 48 | by the general public.

49 | (b) "Commercial fishing facility" means docks, piers,  
 50 | processing houses, or other facilities that support a commercial  
 51 | fishing operation or an aquaculture operation certified under  
 52 | chapter 597.

53 | (c) "Commercial fishing operation" has the same meaning as  
 54 | provided in s. 379.2351.

55 | (d) "Drystack" means a vessel storage facility or building  
 56 | in which storage spaces for vessels are available for use by the

57 public on a first-come, first-served basis. The term excludes  
 58 storage that is purchased, received, or rented as a result of  
 59 homeownership or tenancy.

60 (e) "Land used predominantly for commercial fishing  
 61 purposes" means land used in good faith in a for-profit  
 62 commercial fishing operation for the taking or harvesting of  
 63 freshwater fish or saltwater products, as defined in s. 379.101,  
 64 for which a commercial license to take, harvest, or sell such  
 65 fish or products is required under chapter 379, or land used in  
 66 an aquaculture operation certified under chapter 597.

67 (f) "Marina" means a licensed commercial facility  
 68 available for use by the public that provides secured public  
 69 moorings or drystacks for vessels on a first-come, first-served  
 70 basis. The term excludes mooring or storage that is purchased,  
 71 received, or rented as a result of homeownership or tenancy.

72 (g) "Marine manufacturing facility" means a facility that  
 73 manufactures vessels for use in waters that are navigable.

74 (h) "Marine vessel construction and repair facility" means  
 75 a facility that constructs and repairs vessels that travel over  
 76 waters that are navigable, including, but not limited to,  
 77 shipyards and boatyards.

78 (i) "Open to the public" means for hire to the general  
 79 public and accessible during normal operating hours.

80 (j) "Repair" includes retrofitting and maintenance of  
 81 vessels.

82 (k) "Right-of-way" has the same meaning as provided in s.  
 83 334.03.

84 (l) "Support facility" means a facility that typically is

85 colocated with marine vessel construction and repair facilities,  
 86 including, but not limited to, shops, equipment, and salvage  
 87 facilities.

88 (m) "Water-dependent" means that the activity performed in  
 89 the facility can be conducted only on, in, over, or adjacent to  
 90 waters that are navigable and requires direct access to water  
 91 and involves the use of water as an integral part of such  
 92 activity.

93 (n) "Waterfront" means property that is on, over, or  
 94 abutting waters that are navigable. Property that is separated  
 95 from property abutting waters that are navigable by a right-of-  
 96 way may be considered waterfront property, if:

97 1. The properties on both sides of the right-of-way are  
 98 under common ownership.

99 2. The properties on both sides of the right-of-way are  
 100 part of the same business enterprise.

101 3. The property that is separated from the water by the  
 102 right-of-way has direct access to the water by crossing the  
 103 right-of-way.

104 (o) "Waters that are navigable" means waters that support  
 105 navigation by floating vessels of any description for the  
 106 purpose of transportation, recreation, or commerce.

107 (2) CLASSIFICATION AND ASSESSMENT; LOSS; PENALTY.—

108 (a) The following waterfront properties are eligible for  
 109 classification as working waterfront property:

110 1. Land used predominantly for commercial fishing  
 111 purposes.

112 2. Land that is accessible to the public and used for

113 vessel launches into waters that are navigable.  
 114 3. Marinas and drystacks that are open to the public.  
 115 4. Water-dependent marine manufacturing facilities.  
 116 5. Water-dependent commercial fishing facilities.  
 117 6. Water-dependent marine vessel construction and repair  
 118 facilities and their support facilities.  
 119 7. Water-dependent facilities located in a county defined  
 120 in s. 125.011(1):  
 121 a. Used for the commercial transportation of goods and  
 122 people to and from foreign ports; or  
 123 b. Used to provide towing, storage, and salvage in support  
 124 of the facilities described in sub-subparagraph a.  
 125 (b) Property classified as working waterfront property  
 126 under this section shall be assessed on the basis of current  
 127 use.  
 128 1. If the income approach to valuation is appropriate to  
 129 the property and if adequate local data on market rental rates,  
 130 expense rates, and vacancy rates are available to the property  
 131 appraiser, the assessed value shall be calculated using the  
 132 income approach to value, using a capitalization rate based upon  
 133 the debt coverage ratio formula, adjusted for the effective tax  
 134 rate and the percentage of equity multiplied by the equity yield  
 135 rate. The capitalization rate shall be calculated and updated  
 136 annually and shall be based on local data.  
 137 2. If the conditions required for assessment under  
 138 subparagraph 1. are not satisfied, the property appraiser shall  
 139 value the property at its present cash value as if it were  
 140 required to remain in its current use into the foreseeable

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141 future.

142 3. In no event shall the assessed value of the property  
143 exceed just value.

144 4. When a parcel contains uses eligible for assessment  
145 under this section and uses that are not eligible for assessment  
146 under this section, those portions of the property that are not  
147 eligible for assessment under this section must be assessed  
148 separately as otherwise provided by this chapter.

149 (c)1. Property may not be classified as working waterfront  
150 property unless an application for such classification is filed  
151 with the property appraiser on or before March 1 of each year in  
152 the county in which the property is located. Before approving  
153 such classification, the property appraiser may require the  
154 applicant to establish that the property is actually used as  
155 required under this section. The property appraiser may require  
156 the applicant to furnish the property appraiser such information  
157 as may reasonably be required to establish that such property  
158 was actually used for working waterfront purposes, and to  
159 establish the classified use value of the property, including  
160 income and expense data. The owner or lessee of the property  
161 classified as working waterfront property in the prior year may  
162 reapply on a short form provided by the Department of Revenue.  
163 The lessee of property may make original application or reapply  
164 on a short form if the lease, or an affidavit executed by the  
165 owner, provides that the lessee is empowered to make application  
166 for the working waterfront classification on behalf of the owner  
167 and a copy of the lease or affidavit accompanies the  
168 application. An applicant may withdraw an application on or

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169 before the 25th day following the mailing of the notice of  
170 proposed property taxes pursuant to s. 200.069 in the year the  
171 application was filed.

172 2. Failure of a property owner or lessee to apply for a  
173 classification as working waterfront property by March 1  
174 constitutes a waiver for 1 year of the privilege granted in this  
175 section. However, a person who is qualified to receive a working  
176 waterfront classification but who fails to timely apply for  
177 classification may file an application for classification with  
178 the property appraiser on or before the 25th day following the  
179 mailing of proposed property taxes pursuant to s. 200.069. Upon  
180 review of the application, if the applicant is qualified to  
181 receive the classification and demonstrates particular  
182 extenuating circumstances that warrant the classification, the  
183 property appraiser may grant the classification.

184 3. A county, at the request of the property appraiser and  
185 by a majority vote of its governing body, may waive the  
186 requirement that an annual application or short form be filed  
187 with the property appraiser for renewal of the classification of  
188 property within the county as working waterfront property. Such  
189 waiver may be revoked by a majority vote of the county governing  
190 body.

191 4. Notwithstanding subparagraph 3., a new application for  
192 classification as working waterfront property must be filed with  
193 the property appraiser whenever any property granted the  
194 classification as working waterfront property is sold or  
195 otherwise disposed of, whenever ownership or the lessee changes  
196 in any manner, whenever the owner or the lessee ceases to use

197 the property as working waterfront property, or whenever the  
 198 status of the owner or the lessee changes so as to change the  
 199 classified status of the property.

200 5. The property appraiser shall remove from the  
 201 classification as working waterfront property any property for  
 202 which the classified use has been abandoned or discontinued, or  
 203 if the property has been diverted to an unclassified use. Such  
 204 removed property shall be assessed at just value as provided in  
 205 s. 193.011.

206 6.a. The owner of any property classified as working  
 207 waterfront property who is not required to file an annual  
 208 application under this section, and the lessee if the  
 209 application was made by the lessee, shall notify the property  
 210 appraiser promptly whenever the use of the property or the  
 211 status or condition of the owner or lessee changes so as to  
 212 change the classified status of the property. If any such  
 213 property owner or lessee fails to notify the property appraiser  
 214 and the property appraiser determines that for any year within  
 215 the prior 10 years the owner was not entitled to receive such  
 216 classification, the owner of the property is subject to taxes  
 217 otherwise due and owing as a result of such failure plus 15  
 218 percent interest per annum and a penalty of 50 percent of the  
 219 additional taxes owed. However, the penalty may be waived if the  
 220 owner or lessee can demonstrate that he or she took reasonable  
 221 care to notify the property appraiser of the change in use,  
 222 status, or condition of the property.

223 b. The property appraiser making such determination shall  
 224 record in the public records of the county in which the working



225 waterfront property is located a notice of tax lien against any  
 226 property owned by the working waterfront property owner, and  
 227 such property must be identified in the notice of tax lien. Such  
 228 property is subject to the payment of all taxes and penalties.  
 229 Such lien, when filed, attaches to any property identified in  
 230 the notice of tax lien owned by the person or entity that  
 231 illegally or improperly received the classification. If such  
 232 person or entity no longer owns property in that county but owns  
 233 property in another county or counties in the state, the  
 234 property appraiser shall record in such other county or counties  
 235 a notice of tax lien identifying the property owned by the  
 236 working waterfront property owner in such county or counties  
 237 which shall become a lien against the identified property.

238 7. The property appraiser shall have available at his or  
 239 her office a list by ownership of all applications for  
 240 classification as working waterfront property received, showing  
 241 the acreage, the just valuation under s. 193.011, the value of  
 242 the land under the provisions of this subsection, and whether  
 243 the classification was granted.

244 (3) DENIAL OF CLASSIFICATION; APPEAL.—

245 (a) If an application for working waterfront  
 246 classification is made by March 1, the property appraiser shall  
 247 notify the applicant in writing of a denial of the application  
 248 on or before July 1 of the year for which the application was  
 249 filed. The notification shall advise the applicant of his or her  
 250 right to appeal to the value adjustment board and of the appeal  
 251 filing deadline.

252 (b) Any applicant whose application for classification as

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253 working waterfront property is denied by the property appraiser  
254 may appeal to the value adjustment board by filing a petition  
255 requesting that the classification be granted. The petition may  
256 be filed on or before the 25th day following the mailing of the  
257 assessment notice by the property appraiser as required under s.  
258 194.011(1). The petitioner shall pay a nonrefundable fee of \$15  
259 upon filing the petition. Upon the value adjustment board's  
260 review of the petition, if the petitioner is qualified to  
261 receive the classification, the value adjustment board may grant  
262 the petition and classification.

263 (c) A denial of a petition for classification by the value  
264 adjustment board may be appealed to a court of competent  
265 jurisdiction.

266 (d) Property that has received a working waterfront  
267 classification from the value adjustment board or a court of  
268 competent jurisdiction under this subsection is entitled to  
269 receive such classification in any subsequent year until such  
270 use is changed, abandoned, or discontinued, or the ownership  
271 changes in any manner as provided in subparagraph (2)(c)4. The  
272 property appraiser shall, no later than January 31 of each year,  
273 provide notice to the property owner or lessee receiving a  
274 classification under this subsection requiring the property  
275 owner or a lessee qualified to make application to certify that  
276 the ownership and the use of the property has not changed. The  
277 department shall prescribe by rule the form of the notice to be  
278 used by the property appraiser.

279 Section 2. Subsection (1) of section 195.073, Florida  
280 Statutes, is amended to read:

281           195.073 Classification of property.—All items required by  
 282 law to be on the assessment rolls must receive a classification  
 283 based upon the use of the property. The department shall  
 284 promulgate uniform definitions for all classifications. The  
 285 department may designate other subclassifications of property.  
 286 No assessment roll may be approved by the department which does  
 287 not show proper classifications.

288           (1) Real property must be classified according to the  
 289 assessment basis of the land into the following classes:

290           (a) Residential, subclassified into categories, one  
 291 category for homestead property and one for nonhomestead  
 292 property:

- 293           1. Single family.
- 294           2. Mobile homes.
- 295           3. Multifamily.
- 296           4. Condominiums.
- 297           5. Cooperatives.
- 298           6. Retirement homes.

299           (b) Commercial and industrial.

300           (c) Agricultural.

301           (d) Nonagricultural acreage.

302           (e) High-water recharge.

303           (f) Historic property used for commercial or certain  
 304 nonprofit purposes.

305           (g) Exempt, wholly or partially.

306           (h) Centrally assessed.

307           (i) Leasehold interests.

308           (j) Time-share property.

309 (k) Land assessed under s. 193.501.

310 (l) Working waterfront property.

311 (m)-(l) Other.

312 Section 3. For the 2010 calendar year, an application for  
 313 classification as working waterfront under s. 193.704, Florida  
 314 Statutes, must be filed on or before July 1 instead of on or  
 315 before March 1.

316 Section 4. If any provision of this act or the application  
 317 thereof to any person or circumstance is held invalid, the  
 318 invalidity does not affect other provisions or applications of  
 319 the act which can be given effect without the invalid provision  
 320 or application, and to this end the provisions of this act are  
 321 severable.

322 Section 5. The Department of Revenue may adopt emergency  
 323 rules to administer s. 193.704, Florida Statutes, as created by  
 324 this act. The emergency rules shall remain in effect for 6  
 325 months after adoption and may be renewed during the pendency of  
 326 procedures to adopt rules addressing the subject of the  
 327 emergency rules.

328 Section 6. This act shall take effect upon becoming a law  
 329 and shall operate retroactively to January 1, 2010.