

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

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

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.