

1 A bill to be entitled
 2 An act relating to ad valorem taxation; amending s.
 3 194.301, F.S.; revising criteria for burden of proof in ad
 4 valorem tax assessment value challenges; deleting certain
 5 provisions relating to presumption of correctness of
 6 property appraiser's assessments; specifying burden of
 7 proof for property appraisers in actions challenging
 8 denial of an exemption or assessment classification;
 9 providing legislative intent relating to taxpayer burden
 10 of proof; amending s. 193.011, F.S.; expanding the factors
 11 that a property appraiser must consider in deriving just
 12 valuation; requiring consideration of the legally
 13 permissible use of property; requiring the consideration
 14 of zoning changes, concurrency requirements, and permits
 15 necessary to achieve the highest and best use of property;
 16 requiring consideration of external obsolescence of
 17 property; requiring consideration of physical
 18 deterioration and functional obsolescence of property;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 194.301, Florida Statutes, is amended
 24 to read:

25 194.301 Presumption of correctness and burden of proof in
 26 ad valorem tax value assessment challenges.--

27 (1) In any administrative or judicial action in which a
 28 taxpayer challenges an ad valorem tax assessment of value, the
 29 property appraiser shall have the burden of going forward and
 30 proving that his or her assessment was arrived at by complying

31 with s. 193.011 and professionally accepted appraisal practices,
32 including mass appraisal practices, in which case the assessment
33 shall be presumed correct. The taxpayer shall have the burden of
34 proving by a preponderance of the evidence that the assessment
35 of value exceeds just value or that the assessment is based upon
36 appraisal practices which are different from the appraisal
37 practices generally applied to comparable property within the
38 same class. In any judicial action in which the property
39 appraiser challenges the value adjustment board's determination
40 of value, the property appraiser shall have the burden of
41 proving by a preponderance of the evidence that the assessment
42 established by the value adjustment board is less than just
43 value appraiser's assessment shall be presumed correct. This
44 ~~presumption of correctness is lost if the taxpayer shows by a~~
45 ~~preponderance of the evidence that either the property appraiser~~
46 ~~has failed to consider properly the criteria in s. 193.011 or if~~
47 ~~the property appraiser's assessment is arbitrarily based on~~
48 ~~appraisal practices which are different from the appraisal~~
49 ~~practices generally applied by the property appraiser to~~
50 ~~comparable property within the same class and within the same~~
51 ~~county. If the presumption of correctness is lost, the taxpayer~~
52 ~~shall have the burden of proving by a preponderance of the~~
53 ~~evidence that the appraiser's assessment is in excess of just~~
54 ~~value. If the presumption of correctness is retained, the~~
55 ~~taxpayer shall have the burden of proving by clear and~~
56 ~~convincing evidence that the appraiser's assessment is in excess~~
57 ~~of just value. In no case shall the taxpayer have the burden of~~
58 ~~proving that the property appraiser's assessment is not~~
59 ~~supported by any reasonable hypothesis of a legal assessment. If~~
60 ~~the property appraiser's assessment is determined to be~~

61 erroneous, the value adjustment board ~~Value Adjustment Board~~ or
62 the court can establish the assessment if ~~there exists~~
63 competent, substantial evidence exists in the record, which
64 cumulatively meets the requirements of s. 193.011 by applying
65 professionally accepted appraisal practices. If the record lacks
66 such competent, substantial evidence ~~meeting the just value~~
67 ~~criteria of s. 193.011~~, the matter shall be remanded to the
68 property appraiser with appropriate directions from the value
69 adjustment board ~~Value Adjustment Board~~ or the court.

70 (2) In any administrative or judicial action in which a
71 denial of an exemption or assessment classification is
72 challenged, the property appraiser shall have the burden of
73 proving that his or her denial complies with the applicable laws
74 governing such exemption or assessment classification.

75 Section 2. It is the express intent of the Legislature
76 that a taxpayer shall not have the burden of proving that the
77 property appraiser's assessment is not supported by any
78 reasonable hypothesis of a legal assessment and all cases
79 setting out such a standard were expressly rejected
80 legislatively on the adoption of chapter 97-85, Laws of Florida.
81 It is the further intent of the Legislature that any cases of
82 law published since 1997 citing the every-reasonable-hypothesis
83 standard are expressly rejected to the extent that they are
84 interpretative of legislative intent.

85 Section 3. Sections 1 and 2 of this act shall take effect
86 upon becoming a law.

87 Section 4. Section 193.011, Florida Statutes is amended to
88 read:

89 193.011 Factors to consider in deriving just valuation.—In
90 arriving at just valuation of real and tangible personal

91 property as required under s. 4, Art. VII of the State
92 Constitution, the property appraiser shall take into
93 consideration the following factors:

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

99 (2) The highest and best use to which the property can be
100 expected to be put in the immediate future and the present use
101 of the property, taking into consideration the legally
102 permissible use of the property including any applicable
103 judicial limitation, local or state land use regulation, or
104 historic preservation ordinance, and any zoning changes,
105 concurrency requirements, and permits necessary to achieve the
106 highest and best use, and considering any moratorium imposed by
107 executive order, law, ordinance, regulation, resolution, or
108 proclamation adopted by any governmental body or agency or the
109 Governor when the moratorium or judicial limitation prohibits or
110 restricts the development or improvement of property as
111 otherwise authorized by applicable law. The applicable
112 governmental body or agency or the Governor shall notify the
113 property appraiser in writing of any executive order, ordinance,
114 regulation, resolution, or proclamation it adopts imposing any
115 such limitation, regulation, or moratorium;

116 (3) The location of said property;

117 (4) The quantity or size of said property;

118 (5) The cost of said property and the present replacement
119 value of any improvements thereon, taking into account external
120 obsolescence;

121 (6) The condition of said property, taking into account
122 physical deterioration and functional obsolescence;

123 (7) The income from said property; and

124 (8) The net proceeds of the sale of the property, as
125 received by the seller, after deduction of all of the usual and
126 reasonable fees and costs of the sale, including the costs and
127 expenses of financing, and allowance for unconventional or
128 atypical terms of financing arrangements. When the net proceeds
129 of the sale of any property are utilized, directly or
130 indirectly, in the determination of just valuation of realty of
131 the sold parcel or any other parcel under the provisions of this
132 section, the property appraiser, for the purposes of such
133 determination, shall exclude any portion of such net proceeds
134 attributable to payments for household furnishings or other
135 items of personal property.

136 Section 5. This act shall take effect upon becoming a law
137 and shall apply to assessments in 2009.