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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

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

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

194.035 Special magistrates; property evaluators.--

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

**RULES OF PROCEDURE
MARTIN COUNTY VALUE ADJUSTMENT BOARD**

I CREATION AND COMPOSITION OF THE VALUE ADJUSTMENT BOARD

- A. The Value Adjustment Board (the "Board") is created by Section 194.015, Fla. Stat., consisting of three members from the Martin County Commission and two members from the Martin County School Board.
- B. A member of the Martin County Commission shall be chair of the Board.
- C. A quorum shall consist of at least three (3) members of the Board; however, the quorum shall consist of at least one member from both the School Board and the County Commission.
- D. Members of the Board may be temporarily replaced by other members of the respective Boards on appointment by their respective chairs.
- E. The Martin County Clerk of the Circuit Court shall be the Clerk of the Value Adjustment Board.

II FUNCTION AND AUTHORITY OF THE VALUE ADJUSTMENT BOARD

- A. The Board shall have the authority to meet for the following purposes:
 - 1. Hearing petitions relating to assessments filed pursuant to Section 194.011(3), Fla. Stat.
 - 2. Hearing complaints relating to homestead exemptions as provided for under Section 196.151, Fla. Stat.
 - 3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under Section 196.011, Fla. Stat.
 - 4. Hearing appeals concerning ad valorem tax deferrals, classifications. Hearing good cause hearings pursuant to the provisions of the Florida Administrative Code 12D-10.003(8).
 - 5. Ex Parte Contacts. For those actions of the Board which are quasi-judicial in nature, to ensure that the Board review process

shall occur in an atmosphere free of bias or pressure, contacts by anyone outside of a Board meeting to members of the Board are prohibited.

In the event that a Board member shall receive any written, oral, graphic, or communication of any kind or nature which may directly or indirectly influence the disposition of a quasi judicial proceeding of the Board, such ex parte communication shall be forwarded to the Clerk of the Board to be included in the record of the Board proceedings.

III PETITIONS

A. A petition to the Value Adjustment Board shall:

1. Be in substantially the form prescribed by the Florida Department of Revenue. (Forms DR-486 and DR-486T)
2. Describe the property by parcel number, folio number, real estate number or personal property account number.
3. Be sworn to by the petitioner.
4. State the approximate time anticipated by the petitioner to present and argue the petition.
5. Include the petitioner's estimate of fair market value as of January 1 of the current year if the petitions concern value.
6. Be filed with the Clerk of the Board. Incomplete petitions shall not be accepted. A petition shall be deemed incomplete if it fails to meet any of the requirements set forth in paragraphs 1 through 5 above. In the event that an incomplete petition has been received by the Clerk of the Board, such incomplete petition shall be returned to the petitioner with a notation that the petition may not be accepted in its incomplete form.
7. Be filed in compliance with the time periods set forth in Florida Statutes and in compliance with the filing requirements set forth in Section 193.052, Fla. Stat., as related specifically to commercial personal property. In accordance with Section 194.011(3)(d), Fla. Stat., petitions involving an exemption denial, agricultural classification or other classification denial must be received, not postmarked, on or before the 30th day

following the mailing of the notice of denial of the property appraiser. Petitions as to valuation issues must be received, not postmarked, by the Clerk of the Board by the 25th day following the date of the TRIM notice. Petitions received by the Clerk after the statutory deadlines are not timely filed and will not be scheduled for a hearing unless the procedure set forth in paragraph 8. below is utilized.

8. Late filed petitions will not be accepted unless such petitions contain a late file form requesting that the VAB consider the petition based on the petitioner's demonstration of good cause justifying consideration of the late petition and that the delay will not, in fact, be prejudicial to the performance of the VAB's functions in the taxing process. Such late filed petitions will be scheduled by the Clerk for consideration by the Board. Upon review of the late file form, the Board may grant or deny the request based upon the review set forth in Rule 12D-10.003(8), F.A.C. However, late filed requests filed after completion of all VAB hearings are hereby determined to cause delay which is prejudicial to the performance of the VAB in the taxing process and shall not be accepted by the Clerk and returned as untimely.
- B. The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire Board proceedings, including any appeals of a Board decision by the Property Appraiser pursuant to Section 194.036, Fla. Stat.
- C. Time. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed herein is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. If the tenth day before a hearing is a Saturday, Sunday, or legal holiday, the information herein shall be provided no later than the previous business day.
- D. Filing fees must be paid when the petition is filed. If such fees are not paid at that time, the petition will be considered invalid and shall be rejected.

- E. An assessment may not be contested until a return required by Section 193.052, Fla. Stat. has been filed.

IV SPECIAL MAGISTRATES

- A. The Board is required to appoint special magistrates for the purpose of taking testimony and making recommendations to the Board on petitions filed pursuant to Chapter 194, Fla. Stat.
- B. Special magistrates shall be appointed by the Board from a list of those qualified individuals who are willing to serve as special magistrates for the Board. It is the Board's policy to recruit individuals who are interested in serving as special magistrates. Annually the Clerk of the Board shall take the necessary steps to inform all qualified individuals of the availability of such opportunities through the use of the medium including, but not limited to, newspapers, professional newsletters, and professional associations.
- C. Qualifications for Special Magistrates pursuant to Section 194.035, Fla. Stat.:
 - 1. Appraiser special magistrates shall be state certified real estate appraisers with no less than five (5) years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with no less than five (5) years' experience in tangible personal property valuation. All appraisers shall comply with the requirements of Chapter 475, Fla. Stat.
 - 2. A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than five (5) years' experience in the area of ad valorem taxation.
 - 3. Special magistrates shall not be elected or appointed officials or employees of a taxing authority or of the state.
- D. A special magistrate shall be prohibited from representing a taxpayer before the Board or before any special magistrate in any tax year during which the special magistrate serves the Board as a special magistrate.

V SPECIAL MAGISTRATE HEARINGS:

- A. Hearings shall be scheduled by the Clerk of the Board before either an appraiser special magistrate or an attorney special magistrate depending on the nature of the issue(s) raised by the petition.
- B. Notice of Hearing shall be sent by the Clerk of the Board. The notice shall be in writing and delivered by regular mail, so the notice shall be received by the taxpayer no less than twenty five (25) calendar days prior to the day of the scheduled hearing.

The Notice of Hearing shall include a copy of the property card containing relevant information used in computing the current assessment if such card was requested by the taxpayer and is kept in the normal course of business by the property appraiser. The petition form shall include a box which may be checked by the taxpayer in order to request the property card.

- C. Petitioners may be represented by an attorney or agent, but a petitioner shall not be required to retain the services of an attorney or agent and may represent their own interests. If someone other than the taxpayer or an attorney appears on behalf of the petitioner, such person shall provide, prior to the onset of the hearing, authorization in writing from the taxpayer evidencing such person's authority to appear on the taxpayer's behalf. The special magistrate shall have the authority to hear a petition, contingent on proper authorization being submitted prior to the final decision.
- D. The property appraiser, or its authorized representative, may be, but need not be, represented by an attorney in defending the property appraiser's assessment or opposing an exemption.
- E. The special magistrate shall call the cases on the agenda; however, the special magistrate shall not be bound by the order in which the cases appear on the agenda.
- F. A petitioner shall not be required to wait for more than four (4) hours from the scheduled hearing time. If a petition is not heard in the four (4) hour period of time, the petitioner may report to the special magistrate that he or she intends to leave; and if the petitioner is not heard immediately, the petitioner's administrative remedies will be deemed to have been exhausted, and the petitioner may seek such further relief as petitioner deems appropriate. If a petitioner leaves a

scheduled meeting for undue delay, the special magistrate is not precluded from considering the petition.

- G. If after notice of hearing a party does not appear, the hearing may be conducted and the special magistrate may, based on the evidence submitted, make recommendations to the Board in the absence of the party.
- H. A verbatim record of the proceedings shall be made by digital and/or tape recording and shall be retained by the clerk of the Board for a period of not less than four (4) years. In addition, the clerk shall retain and index to the verbatim record all documentary evidence. Proof of any documentary evidence shall be preserved and made available to the Florida Department of Revenue. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings.
- I. All testimony shall be under oath; provided, however, if a person refuses to be sworn for any reason whatsoever, the special magistrate shall not assign unsworn testimony the same weight or credibility as sworn testimony in its deliberations.
- J. As required by Section 194.011(4)(a), Fla. Stat., subsequent to the mailing or sending of the Notice of Hearing, and at least fifteen (15) days before the scheduled hearing, the petitioner shall provide to the property appraiser, through the Board staff, a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of documentation to be presented at the hearing. The summary shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of each witness.
- K. As required by Section 194.011(4)(b), Fla. Stat., no later than seven (7) days before the scheduled hearing if the petitioner provides the information required in paragraph J. above, and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner, and provide a copy to the Board staff, a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of the documentation to be presented at the hearing. The summary shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of each witness. The evidence list must contain the property record card if provided by the clerk. Failure of the property appraiser to timely comply with the requirements of this

paragraph shall result in the rescheduling of the hearing.

- L. If the taxpayer does not provide the information to the property appraiser at least fifteen (15) days prior to the hearing pursuant to subsection J above, the property appraiser need not provide the information to the taxpayer pursuant to subsection K above.
- M. The exchange in subsections J through K above shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or e-mail. It shall be sufficient if at least three (3) fax or email attempts are made to such address. If more than one fax number is provided, three (3) attempts must be made for each number to satisfy this requirement. The petitioner and property appraiser may agree to a different timing and method of exchange. "Provided" means made available in the manner designated by the property appraiser or by the petitioner in his/her submission of information, as via email, facsimile, U.S. mail, or at the property appraiser's office for pick up. If the petitioner does not designate his/her desired manner for receiving the property appraiser's information, the information shall be provided by the property appraiser by depositing it in the U.S. mail. The information shall be sent to the address listed on the petition form; however, it may be submitted to an email or fax address if given.
- N. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. If the fifteenth day before a hearing is a Saturday, Sunday, or legal holiday, the information under the subsection J. shall be provided no later than the previous business day.
- O. The parties may call and examine witnesses, introduce evidentiary materials, cross examine witnesses and rebut evidence. The Special Magistrate shall not take any general action regarding compliance with the exchange of evidence requirements, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with the exchange requirements and shall be taken at a scheduled hearing and be based on evidence presented at such hearing. A property appraiser shall not appear at the hearing and use undisclosed evidence that was not supplied to the petitioner as required. The normal remedy for such noncompliance shall be a

rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

- P. No evidence shall be considered by the special magistrate except when properly presented during the time scheduled for the petitioner's hearing or at a time when the petitioner has been given reasonable notice.
- Q. No petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge and denied to the property appraiser.
- R. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All relevant evidence shall be admitted if petitioner complied with the disclosure requirement set forth above, and it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule which might make such evidence inadmissible over objections in a trial in a court of Florida. The special magistrate may exclude irrelevant, immaterial or unduly repetitious evidence.
- S. Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not, in itself, be considered sufficient to support a finding or decision unless the evidence would be admissible, over objections, in civil actions.
- T. The special magistrate shall have the authority to ask questions at any time of either party, the witnesses, or staff.
- U. At the conclusion of the presentation of the evidence and the taking of testimony, the special magistrate shall make a recommendation to the Board. The recommendation shall include ultimate and basic findings of fact. The recommendation shall include the nature of the change made and indicate the just, taxable, and exempt value before and after the change. The special magistrate's recommendations shall be announced orally at the conclusion of the presentation; provided, however, the special magistrate may defer ruling for good cause and, in such event, the parties shall be notified by the Clerk of the special magistrate's recommendation. In addition, the recommendations of the special magistrate shall be reduced to writing and served on the taxpayer and property appraiser. Service shall be made by delivering

a copy or mailing it to the taxpayer and property appraiser. Service by mail shall be complete upon mailing.

- V. Reschedule/Continuance. The petitioner shall have the right to reschedule a hearing a single time by submitting to the Clerk a written request to reschedule, no less than five (5) calendar days before the day of the originally scheduled hearing. Any additional transfer/rescheduling request shall be made prior to the date of the scheduled hearing and shall be granted only upon proof of: (a) death in the petitioner's immediate family; (b) medical conditions which prevent the petitioner's appearance; (c) jury duty; (d) time-certain court appearance; (e) prepaid travel plans; (f) incarceration; or (g) failure of the property appraiser to furnish evidence as required in Section 194.011, Fla. Stat. If a reschedule/continuance has not been granted by the Board staff pursuant to the authority specifically delegated by the Board, the hearing shall be conducted and a recommendation entered in the absence of the party.
- W. The special magistrate may request legal opinions from the Office of the County Attorney. The special magistrate shall receive all testimony and evidence and prepare a written request for a legal opinion which shall state the legal issue and include the relevant facts. The special magistrate may request that information from the petitioner and property appraiser be included with the request.
- X. Hearing procedures: Neither the Board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition. A property appraiser shall not appear at the hearing and use undisclosed evidence that was not supplied to the petitioner as required. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

VI VALUE ADJUSTMENT BOARD MEETINGS

- A. All recommendations of the special magistrates shall be submitted to the Board for consideration and action by the Board. The Board may act on such recommendations without the necessity of further hearing.

The Board may conduct a full review of a recommendation only if a majority of the Board agrees to such review.

- B. In each case, except when a complaint is withdrawn by the petitioner or is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within twenty (20) calendar days of the last day the board is in session under Section 194.032, Fla. Stat. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the determination of the property appraiser. When a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The Clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the Department of the decision of the board.
- C. A verbatim record of the proceedings shall be made by digital and/or tape recording and shall be retained by the clerk of the Board for a period of not less than four (4) years. In addition, the clerk shall retain and index to the verbatim record all documentary evidence. Nothing herein shall be deemed to prohibit any party from providing a court reporter for the proceedings.
- D. All testimony shall be under oath; provided, however, if a person refuses to be sworn for any reason whatsoever, the Board shall not assign unsworn testimony the same weight or credibility as sworn testimony in its deliberations.
- E. Further relief shall be provided pursuant to the provisions of Section 194.036, Fla. Stat.

VII PROCEDURES FOR REMAND BY THE VALUE ADJUSTMENT BOARD

- A. In the event that the property appraiser's assessment is determined to be erroneous pursuant to the provisions of Section 194.301, Fla. Stat., and the record lacks competent, substantial evidence meeting the just value criteria set forth in Section 193.011, Fla. Stat., the matter shall be remanded to the property appraiser by the Board.
- B. The remand shall include appropriate and specific direction from the Board.
- C. The property appraiser shall conduct a review of the assessment and,

within fifteen (15) calendar days of the remand by the Board, shall notify the petitioner by certified mail and notify the Board, in writing, of the results of the review assessment.

- D. Petitioner shall have fifteen (15) calendar days from receipt of the notice to request a continuation of the hearing. In the event the petitioner desires a continuation of the hearing following notice of the review of the assessment by the property appraiser, a hearing shall be scheduled before a special magistrate and shall be conducted pursuant to the rules set forth above for a special magistrate hearing.

VIII DISCLOSURE OF TAX IMPACT

- A. After hearing all petitions, complaints, appeals and disputes, the clerk shall make public notice of the findings and results of the board pursuant to the guidelines set forth in Sections 194.037(1) and (2), Fla Stat.
- B. The form of the notice, including appropriate narrative and column descriptions, shall be prescribed by department rule and shall be brief and nontechnical to minimize confusion for the average taxpayer.