

By the Committee on Finance and Tax

593-01637-10

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

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30 working waterfront property on an assessment roll;
31 providing for severability; providing for retroactive
32 application; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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

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

41 (1) INTENT.-The Legislature recognizes that Florida's
42 traditional working waterfronts are important to the state's
43 heritage and economic vitality, and that the conversion of
44 working waterfronts to exclusively private uses limits public
45 access to the state's waterways for recreational boating,
46 fishing, and other commercial water-dependent activities. The
47 Legislature also recognizes that the conversion of traditional
48 working waterfronts to exclusively private uses often causes an
49 increase in property taxes on nearby working waterfronts when
50 these waterfronts are assessed at their highest and best use. It
51 is the intent of the Legislature that working waterfront
52 property, including water-dependent commercial transportation
53 facilities and their water-dependent support facilities, shall
54 be assessed at the property's current use, as provided by s.
55 4(j), Art. VII of the State Constitution.

56 (2) DEFINITIONS.-For purposes of granting a working
57 waterfront property classification under this section for
58 January 1, 2010, and thereafter, the term:

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59 (a) "Accessible to the public" means routinely available to
60 the public from sunrise to sunset, with or without charge, with
61 appropriate accommodations, including, but not limited to,
62 public parking or public boat ramps that are available for use
63 by the general public.

64 (b) "Commercial fishing facility" means docks, piers,
65 processing houses, or other facilities that support a commercial
66 fishing operation or an aquaculture operation certified under
67 chapter 597.

68 (c) "Commercial fishing operation" has the same meaning as
69 provided in s. 379.2351.

70 (d) "Drystack" means a vessel storage facility or building
71 in which storage spaces for vessels are available for use by the
72 public on a first-come, first-served basis, with no automatic
73 renewal rights or conditions. The term excludes storage that is
74 purchased, received, or rented as a result of homeownership or
75 tenancy.

76 (e) "Land used predominantly for commercial fishing
77 purposes" means land used in good faith in a for-profit
78 commercial fishing operation for the taking or harvesting of
79 freshwater fish or saltwater products, as defined in s. 379.101,
80 for which a commercial license to take, harvest, or sell such
81 fish or products is required under chapter 379, or land used in
82 an aquaculture operation certified under chapter 597.

83 (f) "Marina" means a licensed commercial facility that
84 provides secured public moorings or drystacks for vessels on a
85 first-come, first-served basis, with no automatic renewal rights
86 or conditions. The term excludes mooring or storage that is
87 purchased, received, or rented as a result of homeownership or

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88 tenancy.

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

91 (h) "Marine vessel construction and repair facility" means
92 a facility that constructs and repairs vessels that travel over
93 waters that are navigable, including, but not limited to,
94 shipyards and boatyards. As used in this section, the term
95 "repair" includes retrofitting and maintenance of vessels.

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

98 (j) "Support facility" means a facility that typically is
99 colocated with marine vessel construction and repair facilities,
100 including, but not limited to, shops, equipment, and salvage
101 facilities.

102 (k) "Water-dependent" means an activity that can be
103 conducted only on, in, over, or adjacent to waters that are
104 navigable and that requires direct access to water and involves
105 the use of water as an integral part of such activity.

106 (l) "Waterfront" means property that is on, over, or
107 abutting waters that are navigable. Property that is separated
108 from property abutting waters that are navigable by a public
109 right of way may be considered waterfront property, if the
110 property on both sides of the public right of way is under
111 common ownership and the property that is separated by the
112 public right of way has direct access to the water by crossing
113 the public right of way.

114 (m) "Waters that are navigable" means any body of water
115 that is subject to the ebb and flow of the tide, connects with
116 continuous interstate waterway, has navigable capacity, and is

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117 actually navigable.

118 (3) CLASSIFICATION AND ASSESSMENT; LOSS; PENALTY.—

119 (a) The following waterfront properties are eligible for
120 classification as working waterfront property:

121 1. Land used predominantly for commercial fishing purposes.

122 2. Land that is accessible to the public and used for
123 vessel launches into waters that are navigable.

124 3. Marinas and drystacks that are open to the public.

125 4. Water-dependent marine manufacturing facilities.

126 5. Water-dependent commercial fishing facilities.

127 6. Water-dependent marine vessel construction and repair
128 facilities and their support facilities.

129 7. Water-dependent facilities used for the commercial
130 transportation of goods and people.

131 8. Water-dependent facilities used for activities that
132 support the commercial transportation of goods and people. These
133 activities include, but are not limited to, towing, storage, and
134 salvage.

135 (b) Property classified as working waterfront property
136 under this section shall be assessed on the basis of current
137 use.

138 1. If the income approach to valuation is appropriate to
139 the property and if adequate local data on market rental rates,
140 expense rates, and vacancy rates are available, the assessed
141 value shall be calculated using the income approach to value,
142 using a capitalization rate based upon the debt coverage ratio
143 formula, adjusted for the effective tax rate and the percentage
144 of equity multiplied by the equity yield rate. The
145 capitalization rate shall be calculated and updated annually and

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146 shall be based on local data.

147 2. If the conditions required for assessment under
148 subparagraph 1. are not satisfied, the property appraiser shall
149 value the property at its present cash value as if it were
150 required to remain in its current working waterfront use.

151 3. In no event shall the assessed value of the property
152 exceed just value.

153 (c)1. Property may not be classified as working waterfront
154 property unless an application for such classification is filed
155 with the property appraiser on or before March 1 of each year in
156 the county in which the property is located. Before approving
157 such classification, the property appraiser may require the
158 applicant to establish that the property is actually used as
159 required under this section. The property appraiser may require
160 the applicant to furnish the property appraiser such information
161 as may reasonably be required to establish that such property
162 was actually used for working waterfront purposes, and to
163 establish the classified use value of the property, including
164 income and expense data. The owner or lessee of the property
165 classified as working waterfront property in the prior year may
166 reapply on a short form provided by the Department of Revenue.
167 The lessee of property may make original application or reapply
168 on a short form if the lease, or an affidavit executed by the
169 owner, provides that the lessee is empowered to make application
170 for the working waterfront classification on behalf of the owner
171 and a copy of the lease or affidavit accompanies the
172 application. An applicant may withdraw an application on or
173 before the 25th day following the mailing of the notice of
174 proposed property taxes pursuant to s. 200.069 in the year the

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175 application was filed.

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

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

195 4. Notwithstanding subparagraph 2., a new application for
196 classification as working waterfront property must be filed with
197 the property appraiser whenever any property granted the
198 classification as working waterfront property is sold or
199 otherwise disposed of, whenever ownership or the lessee changes
200 in any manner, whenever the owner or the lessee ceases to use
201 the property as working waterfront property, or whenever the
202 status of the owner or the lessee changes so as to change the
203 classified status of the property.

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

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

227 b. The property appraiser making such determination shall
228 record in the public records of the county in which the working
229 waterfront property is located a notice of tax lien against any
230 property owned by the working waterfront property owner, and
231 such property must be identified in the notice of tax lien. Such
232 property is subject to the payment of all taxes and penalties.

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233 Such lien, when filed, attaches to any property identified in
234 the notice of tax lien owned by the person or entity that
235 illegally or improperly received the classification. If such
236 person or entity no longer owns property in that county but owns
237 property in another county or counties in the state, the
238 property appraiser shall record in such other county or counties
239 a notice of tax lien identifying the property owned by the
240 working waterfront property owner in such county or counties
241 which shall become a lien against the identified property.

242 7. When a parcel contains both uses eligible for assessment
243 under this section and uses that are not eligible for assessment
244 under this section, those portions of the property that are not
245 eligible for assessment under this section must be assessed
246 separately as otherwise provided by this chapter.

247 8. The property appraiser shall have available at his or
248 her office a list by ownership of all applications for
249 classification as working waterfront property received, showing
250 the acreage, the just valuation under s. 193.011, the value of
251 the land under the provisions of this subsection, and whether
252 the classification was granted.

253 (4) DENIAL OF CLASSIFICATION; APPEAL.—

254 (a) If an application for working waterfront classification
255 is made by March 1, the property appraiser shall notify the
256 applicant in writing of a denial of the application on or before
257 July 1 of the year for which the application was filed. The
258 notification shall advise the applicant of his or her right to
259 appeal to the value adjustment board and of the appeal filing
260 deadline.

261 (b) Any applicant whose application for classification as

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262 working waterfront property is denied by the property appraiser
263 may appeal to the value adjustment board by filing a petition
264 requesting that the classification be granted. The petition may
265 be filed on or before the 25th day following the mailing of the
266 assessment notice by the property appraiser as required under s.
267 194.011(1). Notwithstanding s. 194.013, the petitioner shall pay
268 a nonrefundable fee of \$15 upon filing the petition. Upon the
269 value adjustment board's review of the petition, if the
270 petitioner is qualified to receive the classification and
271 demonstrates particular extenuating circumstances that warrant
272 granting the classification, the value adjustment board may
273 grant the petition and classification.

274 (c) A denial of a petition for classification by the value
275 adjustment board may be appealed to a court of competent
276 jurisdiction.

277 (d)1. Property that has received a working waterfront
278 classification from the value adjustment board or a court of
279 competent jurisdiction under this subsection is entitled to
280 receive such classification in any subsequent year until such
281 use is changed, abandoned, or discontinued, or the ownership
282 changes in any manner as provided in subparagraph (3)(c)4. The
283 property appraiser shall, no later than January 31 of each year,
284 provide notice to the property owner or lessee receiving a
285 classification under this subsection requiring the property
286 owner or a lessee qualified to make application to certify that
287 the ownership and the use of the property has not changed. The
288 department shall prescribe by rule the form of the notice to be
289 used by the property appraiser.

290 2. If a county has waived the requirement that an annual

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291 application or short form be filed for classification of the
292 property under subsection (3), the county may, by majority vote
293 of its governing body, waive the notice and certification
294 requirements of this paragraph and shall provide the property
295 owner or lessee with the same notification as provided to
296 property owners granted a working waterfront classification by
297 the property appraiser. Such waiver may be revoked by a majority
298 vote of the county governing body.

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

301 195.073 Classification of property.—All items required by
302 law to be on the assessment rolls must receive a classification
303 based upon the use of the property. The department shall
304 promulgate uniform definitions for all classifications. The
305 department may designate other subclassifications of property.
306 No assessment roll may be approved by the department which does
307 not show proper classifications.

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

310 (a) Residential, subclassified into categories, one
311 category for homestead property and one for nonhomestead
312 property:

- 313 1. Single family.
 - 314 2. Mobile homes.
 - 315 3. Multifamily.
 - 316 4. Condominiums.
 - 317 5. Cooperatives.
 - 318 6. Retirement homes.
- 319 (b) Commercial and industrial.

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- 320 (c) Agricultural.
- 321 (d) Nonagricultural acreage.
- 322 (e) High-water recharge.
- 323 (f) Historic property used for commercial or certain
324 nonprofit purposes.
- 325 (g) Exempt, wholly or partially.
- 326 (h) Centrally assessed.
- 327 (i) Leasehold interests.
- 328 (j) Time-share property.
- 329 (k) Land assessed under s. 193.501.
- 330 (l) Working waterfront property.
- 331 (m)~~(l)~~ Other.

332 Section 3. If any provision of this act or the application
333 thereof to any person or circumstance is held invalid, the
334 invalidity does not affect other provisions or applications of
335 the act which can be given effect without the invalid provision
336 or application, and to this end the provisions of this act are
337 severable.

338 Section 4. This act shall take effect upon becoming a law,
339 and applies retroactively to January 1, 2010.