

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 09-02 Real Property Used for Conservation Purposes

**SPONSOR(S):** Finance & Tax Council

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	12 Y, 0 N	Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill implements newly-created Section 3(f) of Article VII of the State Constitution, which provides that:

There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

The bill provides a complete exemption from ad valorem taxes to “land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes.” The bill also provides an exemption equal to 50% of the land’s assessed value to “land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial uses.”

The bill creates the Board of Conservation to make determinations regarding whether land encompassing less than 40 contiguous areas is eligible for the exemptions. The board will have 9 members. Five members will be appointed by the Governor representing a rural county government, a medium county government, a large county government, and two nationally recognized organizations whose purposes include the preservation of conservation lands. The other four members will be employees designated by the agency heads of the Department of Agriculture, the Department of Environmental Protection, the Department of Community Affairs and the Fish and Wildlife Conservation Commission.

The bill provides a number of definitions and other changes to accommodate the creation of the exemption.

The bill directs the legislature to appropriate funds to replace the reduction in property tax receipts of fiscally constrained counties with a population not greater than 25,000. Staff estimates that the reimbursements will be approximately \$2,000,000 annually.

The Revenue Estimating Conference has estimated that the provisions of the bill will reduce local government revenues, including school districts, by \$30.3 million beginning in Fiscal Year 2010-11, assuming current millage rates.

The bill has an effective date of upon becoming law, and applies to property tax assessments made on or after January 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Just Value

Art. VII, section 4 of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.<sup>1</sup>

##### Assessed Value

The Florida Constitution authorizes certain alternatives to the just value standard for specific types of property. Agricultural land, land producing high water recharge to Florida's aquifers, land used exclusively for noncommercial recreational purposes, lands used for conservation purposes, and certain waterfront properties are exceptions to the just value requirement and may be assessed solely on the basis of their character or use.<sup>2</sup> Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.<sup>3</sup> In addition, the "Save Our Homes" assessment limitation to the Florida Constitution provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.<sup>4</sup> Specified nonhomestead properties also receive a limitation on assessment increases.<sup>5</sup> Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.<sup>6</sup> Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.<sup>7</sup> The assessed value of property is the value determined after applying the applicable exceptions to the just value requirement.<sup>8</sup> Where no exceptions apply, assessed value equals just value.

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dad County*, 275 So.2d 4(Fla. 1973)

<sup>2</sup> Art. VII, sections 4(a), (b) and (j) of the State Constitution.

<sup>3</sup> Art. VII, section 4(c) of the State Constitution.

<sup>4</sup> Art. VII, section 4(d) of the State Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

<sup>5</sup> Art. VII, sections 4(g) and (h) of the State Constitution

<sup>6</sup> Art. VII, section 4(e) of the State Constitution.

<sup>7</sup> Art. VII, section 4(f) of the State Constitution.

<sup>8</sup> Sec. 192.001(2), F.S.

Taxable value

The taxable value of real and tangible personal property is the just value (fair market value) of the property, adjusted for exclusions (agricultural lands, etc.), differentials (Save Our Homes), or exemptions (homestead) allowed by the constitution or by state law as authorized in the constitution.

Conservation Lands Constitutional Amendment

In November 2008, Florida’s voters approved an amendment placed on the ballot by the Taxation and Budget Reform Commission.<sup>9</sup> The amendment added two provisions to the Florida Constitution, as follows:

Article VII, Section 3. (f)

There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

Article VII, Section 4. (b)

As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

Conservation Lands

Florida has a long tradition of supporting conservation efforts to protect the environment. The state currently has more than 9.5 million acres in state, federal, local government conservation lands. The Florida Natural Areas Inventory indicates that as of March 2008, the distribution of acreage included:

Federal Conservation Lands	4,026,748
State Conservation Lands	5,281,440
Local Conservation Lands (County & City)	<u>408,197</u>
TOTAL	9,716,385

In addition, 175,661 acres were held by private conservation organizations.

Conservation Easements

Section 704.06, F.S., provides statutory authorization for conservation easements, and provides that a conservation easement is “a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded conditions; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.” The statute provides a list of activities which must be prohibited or limited by a conservation easement.

Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will or other instrument executed by or

<sup>9</sup> The Taxation and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution. The TBRC is established every 10 years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment, 7 members appointed by the Speaker of the House of Representatives, 7 members appointed by the President of the Senate, and 4 non-voting ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the working waterfronts proposal as a CS for CP’s 6, 8, & 34, Second Engrossed, and the proposal was Revision 6 on the ballot of the 2008 General Election.

on behalf of the property owner. Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes meet the statutory purposes of a conservation easement. Conservation easements run with the land and are binding on all subsequent owners, and must be recorded in the public records.

### Benefits for Conservation Easements

Potential benefits of conservation easements include federal income tax savings, and federal gift and estate tax savings. Section 170(h) of the Internal Revenue Code provides the requirements under which a conservation easement may qualify for federal income and estate tax deductions. A “qualified contribution” must meet three requirements:

- It must be a qualified real property interest, meaning that it must be the entire interest of the donor other than qualified mineral rights; or a remainder interest; or a perpetual restriction on the use of the property.
- The easement holder must be a qualified organization, meaning a governmental agency or a public charity with conservation goals.
- The conservation purposes of the easement must be clearly defined, meaning:
  - The preservation of land areas for outdoor recreation by, or the education of, the general public,
  - The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems;
  - The preservation of open space, including farmland and forest land, where the preservation is for the scenic enjoyment of the general public, or preservation meets a clearly delineated state, federal, or local governmental conservation policy and will yield a significant public benefit, or the preservation is of a historically important land area or a certified historic structure.

### Assessment of land subject to a conservation easement

Section 193.501, F.S., provides for the assessment of lands subject to a conservation easement under s. 704.06(1), F.S., environmentally endangered lands, and lands used for outdoor recreational purposes or park purposes, when land development rights have been conveyed or when conservation restrictions have been covenanted. When the development rights for such land are transferred for 10 years or more, or when a conveyance or other covenant has been executed for 10 years or more, the property appraiser may consider no factors other than present use, as restricted by any covenant or conveyance. When the development rights for such land are transferred for less than 10 years, or when a conveyance or other covenant has been executed for less than 10 years, the property must be assessed as provided in s. 193.011, F.S., (factors to be considered in determining just valuation), recognizing the nature and length of time of the restrictions placed on the use of land. Property encumbered by a conservation easement under s. 704.06(1), F.S., is always assessed on the basis of current use because the easement is perpetual.

This statutory provision provides for the assessment of land used for conservation purposes as contemplated by section 4(b) of Article VII of the State Constitution.

### **Proposed Changes**

This bill implements newly-created Section 3(f) of Article VII of the State Constitution. The bill creates Section 196.26, Florida Statutes.

The bill provides a complete exemption from ad valorem taxes to “land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes.” The bill also provides an exemption equal to 50% of the land’s assessed value to “land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial uses.”

“Conservation purposes” are defined to mean:

- Retention of the substantial natural value of the land, including, woodlands, wetlands, water courses, ponds, streams, and natural open spaces;
- Retention of such lands as suitable habitat for fish, plants, or wildlife; or
- Retention of such lands’ natural value for water quality enhancement or water recharge.

“Dedicated in perpetuity” is defined to mean that the land is encumbered by an irrevocable, perpetual conservation easement described in section 704.06, F.S.

“Allowed commercial uses” are defined to mean commercial uses that are allowed by the conservation easement encumbering the land exempt from taxation.

In order to qualify for the exemptions, the land must comprise at least 40 contiguous acres. If the land area is smaller than 40 acres, the land will not qualify for the exemption unless that Board of Conservation determines that the use of the land for conservation purposes meets a clearly delineated state conservation policy and yields a significant public benefit. The bill requires the Board of Conservation to consider the fiscal impact the exemption will have on affected governments and other taxpayers when making a determination that a significant public benefit exists.

Buildings, structures and other improvements situated on land receiving the exemption, and the area immediately surrounding the improvement, must be assessed separately pursuant to the provisions of chapter 193, F.S.

Lands used for agriculture that receive an exemption must comply with the most recent best-management practices established by rule of the Department of Agriculture and Consumer Services.

The bill amends section 196.011, F.S., to require the owner of land receiving the exemption to annually certify that the use of the property complies with the restrictions and requirements of the conservation easement. Also, the owner of property receiving the exemption has the duty to notify the property appraiser whenever the use of the property does not comply with the restrictions and requirements of the conservation easement. If the property owner fails to notify the property appraiser and the property appraiser determines that for any year in the preceding 10 years the owner was not entitled to the exemption, the owner is liable for payment of the taxes exempted, plus 18 percent annual interest and a penalty of 100 percent of the taxes exempted.

The bill grants county and municipal governments with jurisdiction over the lands receiving an exemption a third-party right of enforcement to enforce the terms of the applicable conservation easement.

The bill creates the Board of Conservation to make determinations applicable to lands encompassing less than 40 contiguous areas. The board will have 9 members. Five members will be appointed by the Governor representing a rural county government, a medium county government, a large county government, and two nationally recognized organizations whose purposes include the preservation of conservation lands. The other four members will be employees designated by the agency heads of the Department of Agriculture, the Department of Environmental Protection, the Department of Community Affairs and the Fish and Wildlife Conservation Commission.

In addition to creating the exemptions, the bill amends section 193.501, F.S., to remove a reference to subsection (1) of section 704.06, F.S. and retain the reference to section 704.06, F.S. The purpose of this change is to broaden the description of a conservation easement that serves as the basis for land to be assessed based on present use under section 193.501, F.S.

The bill also amends section 704.06 to provide that an owner of property encumbered by a conservation easement must abide by the requirements of chapter 712, F.S. (record marketable titles) or any other similar law or rule to preserve the conservation easement in perpetuity.

The bill amends section 195.073, F.S., to add "Land assessed under s. 193.501" to the list of properties that must be classified on the assessment rolls.

The bill creates section 218.125, F.S., which directs the legislature to appropriate funds to reimburse fiscally constrained counties, as defined in s. 218.67(1), with a population not greater than 25,000, for the reduction in property tax revenues caused by the provisions of the bill. The bill provides a procedure and a methodology for determining the payments to each qualifying county. In 2008, 17 counties would have qualified for reimbursement: Baker, Bradford, Calhoun, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Holmes, Jefferson, Lafayette, Liberty, Madison, Taylor, Union, and Washington.

Finally, the bill grants the Department of Revenue the authority to adopt emergency rules to administer the provisions of newly-created section 196.26, F.S., granting the exemptions.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 196.26, F.S.

Section 2. Amends s. 193.501, F.S.

Section 3. Amends s. 704.06, F.S.

Section 4. Amends s.195.073, F.S.

Section 5. Amends s. 196.011, F.S.

Section 6. Grants emergency rulemaking power to the Department of Revenue.

Section 7. Creates s. 218.125, F.S.

Section 8. Provides an effective date of upon becoming law, and applies to property tax assessments made on or after January 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Department of Revenue may incur some costs to adopt emergency rules and adopt procedures relating to the new exemption created in the bill.

The state will reimburse fiscally constrained counties for the loss of property tax revenue. Staff estimates that the reimbursements will be approximately \$2,000,000 annually.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

The Revenue Estimating Conference has estimated that the provisions of the bill will reduce local government revenues, including school districts, by \$30.3 million beginning in Fiscal Year 2010-11, assuming current millage rates.

The conference estimated that approximately 10% of the over-forty-acres parcels classified as agricultural and nonagricultural acreage would qualify for the exemption. This represents approximately twice as many acres as are encumbered by conservation easements today. For the under-forty-acres parcels, the conference estimated that 1.5 percent of the coastal and interior parcels that meet the requirements of bill would qualify for the exemption.

Fiscally constrained counties with a population of 25,000 or less will be reimbursed by the state for the loss of property tax revenues.

1. Expenditures:

Property Appraisers may incur some costs to implement the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property owners who dedicate land to conservation purposes in perpetuity will pay lower property taxes in the future.

D. FISCAL COMMENTS:

None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to bills implementing an constitutional provision.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue authority to adopt emergency rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 22, 2009, the Finance and Tax Council adopted an amendment to the PCB which provided for the legislature to appropriate funds to fiscally constrained counties with a population not greater than 25,000