**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/CS/SB 2244

INTRODUCER: Policy and Steering Committee on Ways and Means, Finance and Tax Committee, Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Land Used for Conservation Pruposes

DATE: April 23, 2009 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Molloy | Yeatman | CA | **Fav/1 amendment** |
| 2. | Akhavein | Poole | AG | **Fav/1 amendment** |
| 3. | Uchino | Kiger | EP | **Fav/CS** |
| 4. | Fournier | McKee | FT | **Fav/CS** |
| 5. | Fournier | Kelly | WPSC | **Fav/CS** |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | x | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

CS/CS/SB 2244 implements s. 3(f), Art. VII, State Constitution, providing 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. It also implements s. 4(c), Art. VII, State Constitution, providing that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use; provides for a new classification for real property based on use of the land for conservation purposes. It directs the Legislature to reimburse financially restrained counties for their reduction in tax revenue and authorizes the Department of Revenue to adopt emergency rules. The revisions to the State Constitution were proposed by the Florida Taxation and Budget Reform Commission, and were approved by voters in the 2008 General Election.[1]

[1] The Florida Taxation and Budget Reform Commission's (TBRC) initial meeting was in 2007. It was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every 20 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

The Revenue Estimating Conference has determined that this bill will reduce local property tax revenue by $51 million annually, beginning in FY 2010-11.

The bill requires the Legislature to appropriate money for payments in lieu of taxes to fiscally constrained counties that experience a reduction in revenue because of the property tax exemption and assessment limitation provided by this bill.

The CS provides for an effective date of July 1, 2009.

The CS creates ss. 196.1962 and 218.125, and amends ss. 193.501, 195.073, 196.011, and 704.06 of the Florida Statutes.

## II. 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.[2]

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, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.[3] 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.[4] 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,[5] and increases in the assessed value of non-homestead property is limited to 10 percent annually unless the property changes ownership or undergoes a qualifying improvement.[6] Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.[7] Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.[8]

*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

members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the conservation land proposals as a Combined CS for CP's 15 & 16, First Engrossed, and the proposal was Revision 4 on the ballot of the 2008 General Election.

[2] *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. Dade County,* 275 So.2d 4(Fla. 1973)

[3] Art. VII, section 4(a) of the State Constitution.

[4] Art. VII, section 4(c) of the State Constitution.

[5] 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.

[6] Art. VII, sections 4(g) and (h) of the State Constitution.

[7] Art. VII, section 4(e) of the State Constitution.

[8] Art. VII, section 4(f) of the State Constitution.

(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 proposed by the Florida Tax and Budget Reform Commission, to provide 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, and to provide that land used for conservation purposes shall be classified by general law and assessed solely on the basis of 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, and local conservation lands. The Florida Natural Areas Inventory indicates that as of March 2008, the distribution for acreage includes:

- Federal Conservation Lands 4,026,748 acres
- State Conservation Lands 5,281,440 acres
- Local Conservation Lands (County & City) 408,197 acres
- TOTAL for Governmental Entities 9,716,385 acres
- Private Conservation Lands 175,661 acres

*Conservation Easement*— 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, plans, 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 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 of Conservation Easements for property owners*— Potential benefits of conservation easements include federal income tax savings, federal gift and estate tax savings, and federal estate tax exclusions. 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 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; or
  - 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 or federal environmental policy and will yield a significant public benefit, or the preservation is of a historically important land area or a certified historic structure.

The Georgia Legislature has created several incentives for land conservation. The Land Conservation Revolving Loan Fund provides low interest loans to cities, counties, and nonprofit organizations to purchase land or conservation easements with high conservation value and water quality benefit. Cities and counties are authorized to use general fund revenue, revenue bonds, special local sales taxes, local impact fees assessments, local water access and use fees, and federal grants and private donations to pay back the low interest loan.

The Conservation Tax Credit Act[9] was enacted by the Georgia Legislature to increase the financial incentives for a willing landowner to donate land or place a conservation easement on the property. Taxpayers can claim a credit against their state income tax of 25 percent of the fair market value of the donated property, up to a maximum credit of $250,000 per individual and $500,000 per corporation. The amount of the credit used in any one year cannot exceed the amount of state income tax otherwise due. The property must be donated to a governmental entity or a qualified nonprofit organization and must meet at least of one of the conservation goals established in the Georgia Land Conservation Act.[10] The Land Conservation Act also established a grant program to provide funding to cities and counties with an approved community land conservation project and matching funds. However, funding for the grant program is suspended due to economic concerns.

*Assessment of lands 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, or 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 lands 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 use restrictions placed on the land. Property encumbered by a conservation

[9] HB 1107, enacted into law in 2006.
[10] HB 98, enacted into law in 2005.

easement under s. 704.06(1), F.S., must always be assessed on the basis of present use because the easement is perpetual.

## III. Effect of Proposed Changes:

**Section 1** creates s. 196.1962, F.S., to provide an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes. It provides that such property must be encumbered by a valid and enforceable perpetual and nonrevocable conservation easement or other conservation protection agreement that requires:

- The property serve a conservation purpose as defined in 26 U.S.C. s. 170(h); or
- Perpetual retention of the substantial natural value of the property;
- The conservation of native habitat, water quality enhancement, or water quantity recharge;
- Prohibition of certain activities and a requirement that the property to be kept in essentially its natural state;
- Baseline documentation of the natural values to be protected;
- Enforcement of the easement by a federal or state agency, county, city, water management district, or a federal or state agency or nonprofit corporation designated by one of those entities;
- Periodic review by the enforcing entity; and
- Perpetual enforcement.

It provides for the separate assessment of those portions of the property containing improvements and associated curtilage. Real property that is exempt from ad valorem taxation and used for agricultural purposes must be maintained under the most recent best-management practices adopted by rule by the Department of Agriculture and Consumer Services.

It provides that the owner of real property encumbered by a perpetual conservation easement must abide by the requirements of the Florida Marketable Record Title Act,[11] chapter 712, or any other similar law or rule to preserve the effect of the conservation easement or other instrument in perpetuity.

Real property that is less than 40 contiguous acres is not eligible for the exemption unless the property is maintained according to a management plan approved by the entity responsible for enforcing the conservation easement or conservation protection agreement and:

- Contains a natural sinkhole or natural spring that serves a significant water recharge or water production function;
- Contains a unique geological feature;
- Provides habitat for an endangered, threatened, or species of special concern under state or federal law;
- Protects a shoreline adjacent to the Atlantic Ocean, Gulf of Mexico, Outstanding Florida Waters,[12] an Estuary of National Significance,[13] or an American Heritage River;[14] or

[11] Chapter 712, F.S., governs the conditions under which a person has marketable record title to real property, including exceptions.
[12] Established by rule of the Department of Environmental Protection.
[13] Designated by the U.S. Environmental Protection Agency.
[14] Designated by the President of the United States.

- Is adjacent to public lands which are managed for conservation purposes or adjacent to other private lands that are perpetually encumbered by a conservation easement.

The Department of Revenue shall adopt rules providing for the administration of the exemption. The Department of Environmental Protection must adopt a list of nonprofit organizations that are qualified to enforce the conservation easement or conservation protection agreement.

**Section 2** amends s. 193.501, F.S., to clarify the assessment of lands used for conservation purposes. It defines "lands used for conservation purposes" as those lands:

- Designated as environmentally endangered by formal resolution of a local government;
- Designated as conservation land in a local comprehensive plan;
- Used for outdoor recreation or parks if the development rights have been conveyed;
- Used for conservation specified in s. 196.1962, F.S., and subject to a conservation easement or conservation protection agreement; and
- For which a conservation management plan has been filed with the appropriate entity.

The CS provides definitions for "Board," "conservation easement," "covenant," "deferred tax liability," "development right," "outdoor recreational or park purposes" "qualified as environmentally endangered," and "conservation management plan." The CS also provides that conservation easements which are not exempt from ad valorem taxation, lands covenanted for conservation purposes, or lands subject to a conservation management plan filed with the Fish and Wildlife Conservation Commission or a water management district, must be assessed based solely on the basis of character and use, if such protections run for at least ten years. Landowners must apply for assessment under this section, and if the landowner fails to meet the ten-year conservation requirement, the owner must pay the difference between taxes paid and the total amount that would have been due for each of the previous ten years had the land not been assessed on this basis. It also provides for technical and conforming changes.

**Section 3** amends s. 195.073, F.S., to add "land used for conservation purposes" as a tax classification for real property, and to provide for conforming changes.

**Section 4** amends s. 196.011, F.S., to require the property appraiser to mail a renewal form to the applicant by February 1 each year. The applicant must certify that the use of the property complies with the restrictions and requirements of the conservation easement and return the renewal to the property appraiser in order to maintain the tax exemption granted pursuant to s. 196.1962, F.S. It also provides that the owner of any property granted an exemption pursuant to s. 196.1962, F.S., has a duty to promptly notify the property appraiser whenever the use of the property no longer complies with the restrictions and requirements of the conservation easement. The penalty for failure to notify is 200% of the exempted taxes, plus 18% interest on 100% of the exempted amount. It also provides for technical and conforming changes.

**Section 5** creates s. 218.125, F.S., to direct the Legislature to replace reduced ad valorem tax revenue from the implementation of ss. 3(f) and 4(b) of Art. VII of the Florida Constitution to fiscally constrained counties. Each fiscally constrained county is required to apply to the Department of Revenue to participate in the distribution of the appropriation and must provide documentation supporting the county's estimated reduction in ad valorem tax revenue. The CS provides a formula for calculating the reduction.

**Section 6** amends s. 704.06, F.S., to incorporate conservation protection agreements. It allows conservation easements to be perpetual or limited to a certain term. It adopts by reference the definition of "conservation protection agreement" found in s. 196.1962, F.S., and provides for technical and conforming changes.

**Section 7** creates an unnumbered section authorizing the Department of Revenue to adopt emergency rules to administer s. 196.1962, F.S.

**Section 8** provides that the act shall take effect July 1, 2009, and shall apply to property tax assessments made on or after January 1, 2010.

**Other Potential Implications**:

In s. 196.1962, F.S., the CS allows for exemptions of ad valorem tax liability for all real property dedicated in perpetuity that meets the criteria of 26 U.S.C. s. 170(h)(A), which defines conservation purposes, in part, as,

> "the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit[.]"

The implication is that all farmlands, forest lands, and other commercial lands may be exempted from ad valorem taxation if they meet one of the two federal criteria for the preservation of open space. Further, only farmland and silviculture land must adhere to the most recent best-management practices to qualify for the exemption.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The CS implements ss. 3(g) and 4(b), Article VII, of the State Constitution, which requires the Legislature to provide for the assessment of working waterfront property at its current use, so even though it will reduce the authority of counties and municipalities to raise revenues in the aggregate it does not fall under the mandate provisions of s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

This CS provides an ad valorem tax exemption for lands encumbered by a conservation easement or other agreement that limits the use of the property in perpetuity for conservation purposes. The CS also provides a use classification for lands used for conservation purposes, and provides that the assessment of such lands will be based on existing use as limited by an easement or other restrictive covenant or document.

### B. Private Sector Impact:

Owners of property in perpetual conservation easements will be fully exempt from property taxes, and owners of land used for conservation purposes assessed on its character or use may pay lower property taxes unser this bill. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. However, these property owners may benefit from enhanced aesthetic or natural characteristics of their community.

### C. Government Sector Impact:

The Revenue Estimating Conference has determined that the recurring impact of the bill is a reduction in local revenue of $51 million. Exempt property over 40 acres accounts for a revenue reduction of $15.3 million; parcels under 40 acres account for a reduction of $35.7 million. The bill will first affect local revenue in FY 2010-11.

The bill requires the Legislature to appropriate money for payments in lieu of taxes to fiscally constrained counties that experience a reduction in revenue because of the property tax exemption and assessment limitation provided by this bill. A preliminary estimate of the potential payment of lieu of taxes obligation is $2.8 million in FY 2010-11. The bill also requires the Department of Revenue to provide documentation supporting each county's reduction in ad valorem tax revenue.

## VI. Technical Deficiencies:

In s. 196.1962(6), F.S., the Department of Environmental Protection is directed to adopt by rule a list of qualified nonprofit entities that may enforce the provisions of a conservation easement or other conservation protection agreement. However, the CS provides no elements or standards to determine what qualifications are needed for inclusion on the list, does not delineate how entities can be added or removed from the list once it is adopted, or any mechanism for nonprofits to challenge exclusion from the list.

## VII. Related Issues:

Section 196.1962, F.S., requires that conservation easements provide for a right of perpetual enforcement by certain entities in order to qualify for the ad valorem tax exemption. Given this requirement, it is possible that all existing conservation easements that do not provide for perpetual enforcement and periodic review would either have to be renegotiated to include such

provisions or would not qualify for the ad valorem tax exemption. Currently, none of the conservation easements held by the Board of Trustees of the Internal Improvement Trust Fund contains such provisions.

## VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Policy and Steering Committee on Ways and Means on April 23, 2009:**
The committee substitute provides that conservation land used for a commercial agricultural purpose must comply with the most recent best management practices adopted by rule by the Department of Agriculture and Consumer Services. It also provides that an owner of land receiving an exemption must notify the property appraiser whenever the use of the property no longer complies with the conditions of the conservation easement.

**CS by Finance and Tax on April 20, 2009:**
The committee substitute adds a definition of "conservation easement" for the purposes of the exemption for land dedicated in perpetuity for conservation purposes and provides for an application for assessment under s. 193.501, F.S. It also provides that the act shall apply to assessments made on or after January 1, 2010.

**CS by Environmental Preservation and Conservation on April 14, 2009:**
The strike all amendment is the subject of this analysis.

B. Amendments:

None.