

By Senator Altman

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1                   A bill to be entitled  
2           An act relating to land used for conservation  
3           purposes; creating s. 196.1962, F.S.; specifying  
4           conservation purposes for which land must be used in  
5           order to qualify for an ad valorem tax exemption;  
6           requiring that such land be perpetually encumbered by  
7           a conservation easement or other instrument; providing  
8           for the assessment and ad valorem taxation of real  
9           property within an area perpetually encumbered by a  
10          conservation easement or other instrument which  
11          contains a paved road, residence, commercial  
12          structure, or other improvement; requiring land that  
13          is exempt from ad valorem taxation and used for  
14          agricultural or silvicultural purposes be managed  
15          pursuant to certain best-management practices;  
16          requiring an owner of land that is exempt from ad  
17          valorem taxation to take actions to preserve the  
18          perpetual effect of the conservation easement or other  
19          instrument; providing that land less than a certain  
20          acreage does not qualify for the ad valorem tax  
21          exemption; providing exceptions; requiring the  
22          Department of Revenue to adopt rules; amending s.  
23          193.011, F.S.; requiring a property appraiser to  
24          consider the use of property for conservation purposes  
25          in determining the just value of the property;  
26          amending s. 193.501, F.S.; providing for the  
27          assessment of certain land used for conservation  
28          purposes; defining the term "conservation purpose";  
29          providing an effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

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33 Section 1. Section 196.1962, Florida Statutes, is created  
34 to read:

35 196.1962 Exemption of real property dedicated in perpetuity  
36 for conservation purposes.-

37 (1) Pursuant to s. 3(f), Art. VII of the State  
38 Constitution, real property that is dedicated in perpetuity for  
39 the conservation purposes specified in this section is exempt  
40 from ad valorem taxation.

41 (a) Real property qualifying for the exemption shall be  
42 perpetually encumbered by a valid and enforceable conservation  
43 easement or other instrument that:

44 1. Requires the property to serve a conservation purpose,  
45 as defined in 26 U.S.C. s. 170(h)(4)(A), which serves as the  
46 basis of a qualified conservation contribution under 26 U.S.C.  
47 s. 170(h); or

48 2.a. Requires the perpetual retention of the substantial  
49 natural value of the property, including, but not limited to,  
50 woodlands, wetlands, water courses, ponds, streams, and natural  
51 open spaces or requires the restoration of the natural resources  
52 of the land;

53 b. Requires the conservation of native wildlife habitat,  
54 water quality enhancement, or water quantity recharge;

55 c. Prohibits subsurface excavation, billboards, trash,  
56 unlawful pollutants, new paved roads, or residential or  
57 commercial structures on the property and requires the property  
58 to be kept in essentially its natural state;

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59 d. Includes baseline documentation as to the natural values  
60 to be protected on the property and may include a management  
61 plan that details the management of the property so as to  
62 effectuate the conservation of natural resources on the  
63 property;

64 e. Is enforceable by a federal or state agency, county,  
65 municipality, or water management district, or a federal or  
66 state agency or nonprofit corporation designated by such  
67 entities;

68 f. Allows for periodic review by any enforcing entity of  
69 the provisions of the easement or instrument;

70 g. Provides for the perpetual enforcement of the provisions  
71 of the easement or instrument against any present or future  
72 owner of the property; and

73 h. Provides that the conservation easement or other  
74 instrument is perpetual and nonrevocable.

75 (b) If real property that is perpetually encumbered by a  
76 conservation easement or other instrument contains a paved road,  
77 residence, commercial structure, or other improvement, but  
78 otherwise satisfies the requirements of paragraph (a):

79 1. The use of the real property for a residence, commercial  
80 structure, or other improvement, is not a conservation purpose.  
81 Each structure, together with 1 acre of land on which the  
82 structure is located is subject to ad valorem taxation as if the  
83 conservation easement or other instrument does not exist.

84 2. The use of the real property for a paved road is not a  
85 conservation purpose. The paved road is subject to ad valorem  
86 taxation as if the conservation easement or other instrument  
87 does not exist.

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The balance of the property that does not contain a paved road, residence, commercial structure, or other improvement is exempt from ad valorem taxation.

(2) Real property that is exempt from ad valorem taxation pursuant to this section and is used for agricultural or silvicultural purposes must be maintained pursuant to the most recent best-management practices established by the Division of Forestry of the Department of Agriculture and Consumer Services or other entity designated by the department.

(3) An owner of real property that is exempt from ad valorem taxation pursuant to this section shall abide by the requirements of the Florida Marketable Record Title Act, chapter 712, or any other similar law or rule to preserve the effect of the qualifying conservation easement or other instrument in perpetuity.

(4) (a) Notwithstanding subsection (1), real property that is less than 40 contiguous acres is not large enough to serve a conservation purpose that is sufficient to entitle the property to the exemption unless the property:

1. Contains a natural sinkhole or a natural spring that serves a significant water recharge or water production function;

2. Contains a unique geological, archaeological, historical, or cultural feature;

3. Provides habitat for a species that is listed as one of Florida's endangered, threatened, or species of special concern or listed pursuant to the federal Endangered Species Act or a successor law;

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117 4. Is perpetually encumbered by a conservation easement or  
118 other instrument that protects a shoreline adjacent to  
119 Outstanding Florida Waters, an Estuary of National Significance,  
120 or an American Heritage River; or

121 5. Is perpetually encumbered by a conservation easement or  
122 other instrument that protects lands adjacent to public lands  
123 that are managed for conservation purposes or other private  
124 lands that are perpetually encumbered by a conservation easement  
125 or other instrument.

126 (b) The Department of Revenue shall adopt rules providing  
127 for the administration of this subsection.

128 Section 2. Section 193.011, Florida Statutes, is amended to  
129 read:

130 193.011 Factors to consider in deriving just valuation.—In  
131 arriving at just valuation as required under s. 4, Art. VII of  
132 the State Constitution, the property appraiser shall take into  
133 consideration the following factors:

134 (1) The present cash value of the property, which is the  
135 amount a willing purchaser would pay a willing seller, exclusive  
136 of reasonable fees and costs of purchase, in cash or the  
137 immediate equivalent thereof in a transaction at arm's length;

138 (2) The highest and best use to which the property can be  
139 expected to be put in the immediate future and the present use  
140 of the property, taking into consideration the legally  
141 permissible use of the property, including any applicable  
142 judicial limitation, local or state land use regulation, or  
143 historic preservation ordinance, and any zoning changes,  
144 concurrency requirements, and permits necessary to achieve the  
145 highest and best use, the use of the property for conservation

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146 purposes, and considering any moratorium imposed by executive  
147 order, law, ordinance, regulation, resolution, or proclamation  
148 adopted by any governmental body or agency or the Governor when  
149 the moratorium or judicial limitation prohibits or restricts the  
150 development or improvement of property as otherwise authorized  
151 by applicable law. The applicable governmental body or agency or  
152 the Governor shall notify the property appraiser in writing of  
153 any executive order, ordinance, regulation, resolution, or  
154 proclamation it adopts imposing any such limitation, regulation,  
155 or moratorium;

156 (3) The location of said property;

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

158 (5) The cost of said property and the present replacement  
159 value of any improvements thereon;

160 (6) The condition of said property;

161 (7) The income from said property; and

162 (8) The net proceeds of the sale of the property, as  
163 received by the seller, after deduction of all of the usual and  
164 reasonable fees and costs of the sale, including the costs and  
165 expenses of financing, and allowance for unconventional or  
166 atypical terms of financing arrangements. When the net proceeds  
167 of the sale of any property are utilized, directly or  
168 indirectly, in the determination of just valuation of realty of  
169 the sold parcel or any other parcel under the provisions of this  
170 section, the property appraiser, for the purposes of such  
171 determination, shall exclude any portion of such net proceeds  
172 attributable to payments for household furnishings or other  
173 items of personal property.

174 Section 3. Section 193.501, Florida Statutes, is amended to

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175 read:

176 193.501 Assessment of lands used for conservation purposes  
177 ~~subject to a conservation easement~~, environmentally endangered  
178 lands, or lands used for outdoor recreational or park purposes  
179 when land development rights have been conveyed or conservation  
180 restrictions have been covenanted.—

181 (1) The owner or owners in fee of any land subject to a  
182 conservation easement as described in s. 704.06(1), which is not  
183 exempt from ad valorem taxation pursuant to s. 196.1962; land  
184 covenanted for conservation purposes pursuant to paragraph (b);  
185 land qualified as environmentally endangered pursuant to  
186 paragraph (6)(i) and so designated by formal resolution of the  
187 governing board of the municipality or county within which such  
188 land is located; land designated as conservation land in a  
189 comprehensive plan adopted by the appropriate municipal or  
190 county governing body; or any land which is used ~~utilized~~ for  
191 outdoor recreational or park purposes may, by appropriate  
192 instrument, for a term of not less than 10 years:

193 (a) Convey the development right of such land to the  
194 governing board of any public agency in this state within which  
195 the land is located, or to the Board of Trustees of the Internal  
196 Improvement Trust Fund, or to a charitable corporation or trust  
197 as described in s. 704.06(3); or

198 (b) Covenant with the governing board of any public agency  
199 in this state within which the land is located, or with the  
200 Board of Trustees of the Internal Improvement Trust Fund, or  
201 with a charitable corporation or trust as described in s.  
202 704.06(3), that such land be used for ~~subject to one or more of~~  
203 ~~the conservation purposes or restrictions provided in s.~~

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204 ~~704.06(1) or not be used by the owner for any purpose other than~~  
205 outdoor recreational or park purposes. If land is covenanted and  
206 used for an outdoor recreational purpose, the normal use and  
207 maintenance of the land for that purpose, consistent with the  
208 covenant, shall not be restricted. Covenants requiring land to  
209 be used for conservation purposes may prohibit the use of the  
210 land for:

211 1. Construction or placing of buildings, roads, signs,  
212 billboards or other advertising, utilities, or other structures  
213 on or above the ground.

214 2. Dumping or placing of soil or other substance or  
215 material as landfill or dumping or placing of trash, waste, or  
216 unsightly or offensive materials.

217 3. Removal or destruction of trees, shrubs, or other  
218 vegetation.

219 4. Excavation, dredging, or removal of loam, peat, gravel,  
220 soil, rock, or other material substance in such manner as to  
221 affect the surface.

222 5. Surface use except for purposes that permit the land or  
223 water area to remain predominantly in its natural condition.

224 6. Activities detrimental to drainage, flood control, water  
225 conservation, erosion control, soil conservation, or fish and  
226 wildlife habitat preservation.

227 7. Acts or uses detrimental to such retention of land or  
228 water areas.

229 8. Acts or uses detrimental to the preservation of the  
230 structural integrity or physical appearance of sites or  
231 properties of historical, architectural, archaeological, or  
232 cultural significance.



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233 (2) The governing board of any public agency in this state,  
234 or the Board of Trustees of the Internal Improvement Trust Fund,  
235 or a charitable corporation or trust as described in s.  
236 704.06(3), is authorized and empowered in its discretion to  
237 accept any and all instruments conveying the development right  
238 of any such land or establishing a covenant to use the land for  
239 conservation purposes pursuant to subsection (1), and if  
240 accepted by the board or charitable corporation or trust, the  
241 instrument shall be promptly filed with the appropriate officer  
242 for recording in the same manner as any other instrument  
243 affecting the title to real property.

244 (3) When, pursuant to subsections (1) and (2), the  
245 development right in real property has been conveyed to the  
246 governing board of any public agency of this state, to the Board  
247 of Trustees of the Internal Improvement Trust Fund, or to a  
248 charitable corporation or trust as described in s. 704.06(2), or  
249 a covenant has been executed and accepted by the board or  
250 charitable corporation or trust, the lands which are the subject  
251 of such conveyance or covenant shall be thereafter assessed as  
252 provided herein:

253 (a) If the covenant or conveyance extends for a period of  
254 not less than 10 years from January 1 in the year such  
255 assessment is made, the property appraiser, in valuing such land  
256 for tax purposes, shall consider no factors other than those  
257 relative to its value for the present use, as restricted by any  
258 conveyance or covenant under this section.

259 (b) If the covenant or conveyance extends for a period less  
260 than 10 years, the land shall be assessed under the provisions  
261 of s. 193.011, recognizing the nature and length thereof of any

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262 restriction placed on the use of the land under the provisions  
263 of subsection (1).

264 (4) After making a conveyance of the development right or  
265 executing a covenant pursuant to this section, or conveying a  
266 conservation easement pursuant to this section and s. 704.06,  
267 the owner of the land shall not use the land in any manner not  
268 consistent with the development right voluntarily conveyed, or  
269 with the restrictions voluntarily imposed, or with the terms of  
270 the conservation easement or shall not change the use of the  
271 land from outdoor recreational or park purposes during the term  
272 of such conveyance or covenant without first obtaining a written  
273 instrument from the board or charitable corporation or trust,  
274 which instrument reconveys all or part of the development right  
275 to the owner or releases the owner from the terms of the  
276 covenant and which instrument must be promptly recorded in the  
277 same manner as any other instrument affecting the title to real  
278 property. Upon obtaining approval for reconveyance or release,  
279 the reconveyance or release shall be made to the owner upon  
280 payment of the deferred tax liability. Any payment of the  
281 deferred tax liability shall be payable to the county tax  
282 collector within 90 days of the date of approval by the board or  
283 charitable corporation or trust of the reconveyance or release.  
284 The collector shall distribute the payment to each governmental  
285 unit in the proportion that its millage bears to the total  
286 millage levied on the parcel for the years in which such  
287 conveyance or covenant was in effect.

288 (5) The governing board of any public agency or the Board  
289 of Trustees of the Internal Improvement Trust Fund or a  
290 charitable corporation or trust which holds title to a

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291 development right pursuant to this section may not convey that  
292 development right to anyone other than the governing board of  
293 another public agency or a charitable corporation or trust, as  
294 described in s. 704.06(3), or the record owner of the fee  
295 interest in the land to which the development right attaches.  
296 The conveyance from the governing board of a public agency or  
297 the Board of Trustees of the Internal Improvement Trust Fund to  
298 the owner of the fee shall be made only after a determination by  
299 the board that such conveyance would not adversely affect the  
300 interest of the public. Section 125.35 does not apply to such  
301 sales, but any public agency accepting any instrument conveying  
302 a development right pursuant to this section shall forthwith  
303 adopt appropriate regulations and procedures governing the  
304 disposition of same. These regulations and procedures must  
305 provide in part that the board may not convey a development  
306 right to the owner of the fee without first holding a public  
307 hearing and unless notice of the proposed conveyance and the  
308 time and place at which the public hearing is to be held is  
309 published once a week for at least 2 weeks in some newspaper of  
310 general circulation in the county involved prior to the hearing.

311 (6) The following terms whenever used as referred to in  
312 this section have the following meanings unless a different  
313 meaning is clearly indicated by the context:

314 (a) "Board" is the governing board of any city, county, or  
315 other public agency of the state or the Board of Trustees of the  
316 Internal Improvement Trust Fund.

317 (b) "Conservation purpose restriction" means protecting the  
318 natural, scenic, or open space values of real property; ensuring  
319 the availability of real property for wildlife habitat and

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320 recreational or open space use, including scenic enjoyment;  
321 protecting natural resources; maintaining or enhancing air or  
322 water quality or wetlands; or preserving sites or properties of  
323 a historical, archaeological, or cultural significance a  
324 ~~limitation on a right to the use of land for purposes of~~  
325 ~~conserving or preserving land or water areas predominantly in~~  
326 ~~their natural, scenic, open, agricultural, or wooded condition.~~  
327 ~~The limitation on rights to the use of land may involve or~~  
328 ~~pertain to any of the activities enumerated in s. 704.06(1).~~

329 (c) "Conservation easement" means that property right  
330 described in s. 704.06.

331 (d) "Covenant" is a covenant running with the land.

332 (e) "Deferred tax liability" means an amount equal to the  
333 difference between the total amount of taxes that would have  
334 been due in March in each of the previous years in which the  
335 conveyance or covenant was in effect if the property had been  
336 assessed under the provisions of s. 193.011 and the total amount  
337 of taxes actually paid in those years when the property was  
338 assessed under the provisions of this section, plus interest on  
339 that difference computed as provided in s. 212.12(3).

340 (f) "Development right" is the right of the owner of the  
341 fee interest in the land to change the use of the land.

342 (g) "Outdoor recreational or park purposes" includes, but  
343 is not necessarily limited to, boating, golfing, camping,  
344 swimming, horseback riding, and archaeological, scenic, or  
345 scientific sites and applies only to land which is open to the  
346 general public.

347 (h) "Present use" is the manner in which the land is  
348 utilized on January 1 of the year in which the assessment is

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349 made.

350 (i) "Qualified as environmentally endangered" means land  
351 that has unique ecological characteristics, rare or limited  
352 combinations of geological formations, or features of a rare or  
353 limited nature constituting habitat suitable for fish, plants,  
354 or wildlife, and which, if subject to a development moratorium  
355 or one or more conservation easements or development  
356 restrictions appropriate to retaining such land or water areas  
357 predominantly in their natural state, would be consistent with  
358 the conservation, recreation and open space, and, if applicable,  
359 coastal protection elements of the comprehensive plan adopted by  
360 formal action of the local governing body pursuant to s.  
361 163.3161, the Local Government Comprehensive Planning and Land  
362 Development Regulation Act; or surface waters and wetlands, as  
363 determined by the methodology ratified in s. 373.4211.

364 (7) (a) The property appraiser shall report to the  
365 department showing the just value and the classified use value  
366 of property that is subject to a conservation easement under s.  
367 704.06, property assessed as environmentally endangered land  
368 pursuant to this section, and property assessed as outdoor  
369 recreational or park land.

370 (b) The tax collector shall annually report to the  
371 department the amount of deferred tax liability collected  
372 pursuant to this section.

373 Section 4. This act shall take effect July 1, 2009, and  
374 applies to property tax assessments made on or after January 1,  
375 2010.