

FOR CONSIDERATION By the Committee on Finance and Tax

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1 A bill to be entitled

2 An act relating to the assessment of lands used for  
3 conservation purposes; amending s. 193.501, F.S.;  
4 providing for certain lands that are covenanted for  
5 use for conservation purposes to be assessed for ad  
6 valorem taxation in the same manner as lands used for  
7 outdoor recreational or park purposes; redefining the  
8 term "covenant"; defining the term "conservation  
9 purposes"; specifying the information that must be  
10 included in a covenant; requiring covenants to be  
11 notarized; requiring the executive director of the  
12 Department of Revenue to work with local governments  
13 and conservation organizations to develop a form for a  
14 covenant; providing that the requirements for  
15 covenants do not apply to covenants in existence  
16 before the effective date of the act; providing for  
17 retroactive application; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Section 193.501, Florida Statutes, is amended to  
22 read:

23 193.501 Assessment of lands subject to a conservation  
24 easement, environmentally endangered lands, or lands used for  
25 outdoor recreational, conservation, or park purposes after ~~when~~  
26 land development rights have been conveyed or conservation  
27 restrictions have been covenanted.—

28 (1) The owner or owners in fee of any land subject to a  
29 conservation easement as described in s. 704.06; land qualified

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30 as environmentally endangered pursuant to paragraph (6) (i) and  
31 so designated by formal resolution of the governing board of the  
32 municipality or county within which such land is located; land  
33 designated as conservation land in a comprehensive plan adopted  
34 by the appropriate municipal or county governing body; or ~~any~~  
35 land that which is used ~~utilized~~ for conservation, outdoor  
36 recreational, or park purposes may, by appropriate instrument,  
37 for a term of at least ~~not less than~~ 10 years:

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

43 (b) Enter into a covenant as provided in subsection (8)  
44 ~~Covenant~~ with the governing board of any public agency in this  
45 state within which the land is located, ~~or~~ with the Board of  
46 Trustees of the Internal Improvement Trust Fund, or with a  
47 charitable corporation or trust as described in s. 704.06(3),  
48 that such land be subject to one or more of the conservation  
49 restrictions provided in s. 704.06(1) or not be used by the  
50 owner for any purpose other than conservation, outdoor  
51 recreational, or park purposes. If land is covenanted and used  
52 for an outdoor recreational purpose, the normal use and  
53 maintenance of the land for that purpose, consistent with the  
54 covenant, is ~~shall~~ not be restricted.

55 (2) The governing board of any public agency in this state  
56 within which the land is located, ~~or~~ the Board of Trustees of  
57 the Internal Improvement Trust Fund, or a charitable corporation  
58 or trust as described in s. 704.06(3), ~~is~~ authorized to and may

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59 ~~empowered~~ in its discretion ~~to~~ accept any and all instruments  
60 conveying the development right of any such land or enter into a  
61 covenant restricting the use of such land as provided under  
62 subsection (8). ~~establishing a covenant pursuant to subsection~~  
63 ~~(1), and if accepted by the board or charitable corporation or~~  
64 ~~trust,~~ The covenant or other instrument shall be promptly filed  
65 with the appropriate officer for recording in the same manner as  
66 any other instrument affecting the title to real property and  
67 shall be indexed and maintained in such a manner that allows  
68 members of the public to locate the covenant or other instrument  
69 affecting any particular property assessed pursuant to this  
70 section.

71 (3) After ~~When,~~ ~~pursuant to subsections (1) and (2),~~ the  
72 development right in real property has been conveyed, pursuant  
73 to subsections (1) and (2), to the governing board of any public  
74 agency of this state within which the land is located, to the  
75 Board of Trustees of the Internal Improvement Trust Fund, or to  
76 a charitable corporation or trust as described in s. 704.06(2),  
77 or a covenant has been executed and accepted by the board or  
78 charitable corporation or trust, the lands that ~~which~~ are the  
79 subject of such conveyance or covenant shall be ~~thereafter~~  
80 assessed as provided in this section. ~~herein:~~

81 (a) If the covenant or conveyance extends for a period of  
82 at least ~~not less than~~ 10 years from January 1 in the year such  
83 assessment is made, the property appraiser, in valuing such land  
84 for tax purposes, shall consider no factors other than those  
85 relative to its value for the present use, as restricted by any  
86 conveyance or covenant under this section.

87 (b) If the covenant or conveyance extends for a period less

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88 than 10 years, the land shall be assessed under ~~the provisions~~  
89 ~~of~~ s. 193.011, recognizing the nature and length ~~thereof~~ of any  
90 restriction placed on the use of the land under the provisions  
91 of subsection (1).

92 (4) After making a conveyance of the development right or  
93 executing a covenant pursuant to this section, or conveying a  
94 conservation easement pursuant to this section and s. 704.06,  
95 the owner of the land may ~~shall~~ not use the land in any manner  
96 not consistent with the development right voluntarily conveyed,  
97 ~~or~~ with the restrictions voluntarily imposed, or with the terms  
98 of the conservation easement, and may ~~or shall~~ not change the  
99 use of the land from conservation, outdoor recreational, or park  
100 purposes during the term of such conveyance or covenant without  
101 first obtaining a written instrument from the board or  
102 charitable corporation or trust, which instrument reconveys all  
103 or part of the development right to the owner or releases the  
104 owner from the terms of the covenant. The ~~and which~~ instrument  
105 must be promptly recorded in the same manner as any other  
106 instrument affecting the title to real property. Upon obtaining  
107 approval for reconveyance or release, the reconveyance or  
108 release shall be made to the owner upon payment of the deferred  
109 tax liability. Any payment of the deferred tax liability shall  
110 be payable to the county tax collector within 90 days after ~~of~~  
111 the date of approval by the board or charitable corporation or  
112 trust of the reconveyance or release. The collector shall  
113 distribute the payment to each governmental unit in the  
114 proportion that its millage bears to the total millage levied on  
115 the parcel for the years in which such conveyance or covenant  
116 was in effect.

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117 (5) The governing board of any public agency, ~~or~~ the Board  
118 of Trustees of the Internal Improvement Trust Fund, or a  
119 charitable corporation or trust that ~~which~~ holds title to a  
120 development right pursuant to this section may not convey that  
121 development right to anyone other than the governing board of  
122 another public agency or a charitable corporation or trust, as  
123 described in s. 704.06(3), or the record owner of the fee  
124 interest in the land to which the development right attaches.  
125 The conveyance from the governing board of a public agency or  
126 the Board of Trustees of the Internal Improvement Trust Fund to  
127 the owner of the fee shall be made only after a determination by  
128 the board that such conveyance will ~~would~~ not adversely affect  
129 the interest of the public. Section 125.35 does not apply to  
130 such sales, but any public agency accepting any instrument  
131 conveying a development right pursuant to this section shall  
132 immediately ~~forthwith~~ adopt appropriate regulations and  
133 procedures governing the disposition of the development rights  
134 ~~same~~. These regulations and procedures must provide in part that  
135 the board may not convey a development right to the owner of the  
136 fee without first holding a public hearing and unless notice of  
137 the proposed conveyance and the time and place at which the  
138 public hearing is to be held is published once a week for at  
139 least 2 weeks in a ~~some~~ newspaper of general circulation in the  
140 county involved before ~~prior to~~ the hearing.

141 (6) Unless the context clearly indicates a different  
142 meaning, as used ~~The following terms whenever used as referred~~  
143 ~~to~~ in this section, the term ~~have the following meanings unless~~  
144 ~~a different meaning is clearly indicated by the context:~~

145 (a) "Board" means ~~is~~ the governing board of any

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146 municipality ~~city~~, county, or other public agency of the state  
147 or the Board of Trustees of the Internal Improvement Trust Fund.

148 (b) "Conservation restriction" means a limitation on a  
149 right to the use of land for purposes of conserving or  
150 preserving land or water areas predominantly in their natural,  
151 scenic, open, agricultural, or wooded condition. The limitation  
152 on rights to the use of land may involve or pertain to any of  
153 the activities enumerated in s. 704.06(1).

154 (c) "Conservation easement" means that property right  
155 described in s. 704.06.

156 (d) "Covenant" means an agreement running with the land  
157 which restricts the use of the land exclusively to conservation,  
158 outdoor recreational, or park purposes ~~is a covenant running~~  
159 ~~with the land.~~

160 (e) "Deferred tax liability" means an amount equal to the  
161 difference between the total amount of taxes that would have  
162 been due in March in each of the previous years in which the  
163 conveyance or covenant was in effect if the property had been  
164 assessed under the provisions of s. 193.011 and the total amount  
165 of taxes actually paid in those years when the property was  
166 assessed under the provisions of this section, plus interest on  
167 that difference computed as provided in s. 212.12(3).

168 (f) "Development right" means ~~is~~ the right of the owner of  
169 the fee interest in the land to change the use of the land.

170 (g) "Outdoor recreational or park purposes" includes, but  
171 is not necessarily limited to, boating, golfing, camping,  
172 swimming, horseback riding, and archaeological, scenic, or  
173 scientific sites and applies only to land which is open to the  
174 general public.

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175 (h) "Present use" is the manner in which the land is used  
176 ~~utilized~~ on January 1 of the year in which the assessment is  
177 made.

178 (i) "Qualified as environmentally endangered" means land  
179 that has unique ecological characteristics, rare or limited  
180 combinations of geological formations, or features of a rare or  
181 limited nature constituting habitat suitable for fish, plants,  
182 or wildlife, and that ~~which~~, if subject to a development  
183 moratorium or one or more conservation easements or development  
184 restrictions appropriate to retaining such land or water areas  
185 predominantly in their natural state, would be consistent with  
186 the conservation, recreation and open space, and, if applicable,  
187 coastal protection elements of the comprehensive plan adopted by  
188 formal action of the local governing body pursuant to s.  
189 163.3161, the Local Government Comprehensive Planning and Land  
190 Development Regulation Act, ~~+~~ or surface waters and wetlands, as  
191 determined by the methodology ratified in s. 373.4211.

192 (j) "Conservation purposes" means the retention of:

193 1. The substantial natural value of land, including  
194 woodlands, wetlands, water courses, ponds, streams, and natural  
195 open spaces;

196 2. The land as suitable habitat for fish, plants, or  
197 wildlife; or

198 3. The natural value of land for water quality enhancement  
199 or water recharge.

200 (7) (a) The property appraiser shall report to the  
201 department showing the just value and the classified use value  
202 of property that is subject to a conservation easement under s.  
203 704.06, property assessed as environmentally endangered land

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204 pursuant to this section, and property assessed as outdoor  
205 recreational or park land.

206 (b) The tax collector shall annually report to the  
207 department the amount of deferred tax liability collected  
208 pursuant to this section.

209 (8) (a) A covenant must include:

210 1. Identification of the land to which the covenant  
211 applies;

212 2. The land's allowable use or uses;

213 3. The period of time for which the covenant applies;

214 4. The names of all parties to the covenant and the  
215 responsibilities of each party in ensuring that the terms of the  
216 covenant are enforced;

217 5. Penalties that apply if the covenant is breached;

218 6. A statement that the covenant runs with the land and  
219 applies to future landowners; and

220 7. Signatures of all parties to the covenant attesting that  
221 all information in the covenant is true, correct, and complete.

222 (b) A covenant must be notarized.

223 (c) The executive director of the Department of Revenue  
224 shall work with the Board of Trustees of the Internal  
225 Improvement Trust Fund, local governments, and conservation  
226 organizations to develop a form for a covenant. However, the use  
227 of the form is not mandatory.

228 (9) ~~(8)~~ A person or organization that, on January 1, has the  
229 legal title to land that is entitled by law to assessment under  
230 this section shall, on or before March 1 of each year, file an  
231 application for assessment under this section with the county  
232 property appraiser. The application must identify the property

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233 for which assessment under this section is claimed. The initial  
234 application for assessment for any property must include a copy  
235 of the instrument by which the development right is conveyed or  
236 which establishes a covenant that establishes the conservation  
237 purposes for which the land is used. The Department of Revenue  
238 shall prescribe the forms upon which the application is made.  
239 The failure to file an application on or before March 1 of any  
240 year constitutes a waiver of assessment under this section for  
241 that year. However, an applicant who is qualified to receive an  
242 assessment under this section but fails to file an application  
243 by March 1 may file an application for the assessment and may  
244 file, pursuant to s. 194.011(3), a petition with the value  
245 adjustment board requesting that the assessment be granted. The  
246 petition must be filed at any time during the taxable year on or  
247 before the 25th day following the mailing of the notice by the  
248 property appraiser pursuant to s. 194.011(1). Notwithstanding s.  
249 194.013, the applicant must pay a nonrefundable fee of \$15 upon  
250 filing the petition. Upon reviewing the petition, if the person  
251 is qualified to receive the assessment and demonstrates  
252 particular extenuating circumstances judged by the property  
253 appraiser or the value adjustment board to warrant granting the  
254 assessment, the property appraiser or the value adjustment board  
255 may grant the assessment. The owner of land that was assessed  
256 under this section in the previous year and whose ownership or  
257 use has not changed may reapply on a short form as provided by  
258 the department. A county may, at the request of the property  
259 appraiser and by a majority vote of its governing body, waive  
260 the requirement that an annual application or statement be made  
261 for assessment of property within the county. Such waiver may be

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262 revoked by a majority vote of the governing body of the county.

263 (10)~~(9)~~ A person or entity that owns land assessed pursuant  
264 to this section must notify the property appraiser promptly if  
265 the land becomes ineligible for assessment under this section.  
266 If any property owner fails to notify the property appraiser and  
267 the property appraiser determines that for any year within the  
268 preceding 10 years the land was not eligible for assessment  
269 under this section, the owner of the land is subject to taxes  
270 avoided as a result of such failure plus 15 percent interest per  
271 annum and a penalty of 50 percent of the taxes avoided. The  
272 property appraiser making such determination shall record in the  
273 public records of the county a notice of tax lien against any  
274 property owned by that person or entity in the county, and such  
275 property must be identified in the notice of tax lien. The  
276 property is subject to a lien in the amount of the unpaid taxes  
277 and penalties. The lien when filed shall attach to any property  
278 identified in the notice of tax lien which is owned by the  
279 person or entity and which was improperly assessed. If such  
280 person or entity no longer owns property in that county but owns  
281 property in some other county or counties of this state, the  
282 property appraiser shall record a notice of tax lien in such  
283 other county or counties, identifying the property owned by such  
284 person or entity.

285 Section 2. The requirements for covenants to convey  
286 development rights or impose conservation restrictions in  
287 section 193.501(8), Florida Statutes, do not apply to such  
288 covenants in existence before the effective date of this act.

289 Section 3. This act shall take effect upon becoming a law,  
290 and applies retroactively to January 1, 2010.