

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 Committee on Finance and Tax

BILL: CS/SB 190

INTRODUCER: Community Affairs Committee and Senators Hutson and Margolis

SUBJECT: Conservation Easements

DATE: October 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Babin	Diez-Arguelles	FT	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 190 provides that once an original application for ad valorem tax exemption for property subject to a perpetual conservation easement has been granted, the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the conservation easement.

The Revenue Estimating Conference has determined that this bill will not affect state or local tax revenues.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the

¹ Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 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).

taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes,⁴ and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard requires consideration of the highest and best use of property.⁶ The Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments). Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁷ Land used for conservation purposes must be assessed solely on the basis of its character or use.⁸ Counties and municipalities may authorize historic properties to be assessed solely on the basis of their character or use.⁹ Certain working waterfront property is assessed based upon the property's current use.¹⁰

Conservation Easements

Section 704.06(1), F.S., 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, or wooded condition; 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 other significance, or maintaining existing land uses" The section also provides a list of activities which must be prohibited or limited by the 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.¹¹ Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust that meets the statutory purposes of a conservation easement.¹² Conservation easements run with the land and are binding on all subsequent owners.¹³ Conservation easements must be recorded in the same manner as any other instrument affecting the title to real property.¹⁴

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a)

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ Section 704.06(2), F.S.

¹² Section 704.06(3), F.S.

¹³ Section 704.06(4), F.S.

¹⁴ Section 704.06(5), F.S.

Conservation Easement Tax Preferences

Florida has long provided that land subject to a conservation easement of at least 10 years is assessed based on its current use and not its highest and best use.¹⁵

In November 2008, Florida's voters amended the Florida Constitution 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.¹⁶ Thus, Florida provides two tax preferences related to property dedicated to conservation: (1) an ad valorem tax exemption for property subject to a perpetual conservation easement,¹⁷ and (2) a classified use assessment for property subject to a conservation easement of at least 10 years.¹⁸

Annual Application

Generally, Florida requires that every person entitled to an ad valorem exemption annually apply with the property appraiser before March 1, listing and describing the property for which the exemption is claimed and certifying its ownership and use;¹⁹ however, there are exceptions. For instance, certain types of properties are exempt from the annual application,²⁰ a property appraiser may modify the annual application requirement in some situations,²¹ and a county may waive the annual application requirement for most exemptions.²² Applications filed after the first year the exemption is granted are referred to as "renewal applications."²³ Failure to timely file a required application constitutes a waiver of the exemption for that year.²⁴

Florida currently requires annual applications for both the ad valorem exemption for property subject to a perpetual conservation easement and the classified use assessment for property subject to a conservation easement of at least 10 years.²⁵ Property owners must apply by March 1.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 196.011, F.S., to provide that once an original application for ad valorem tax exemption for property subject to a perpetual conservation easement has been granted, the property owner is not required to file a renewal application until the use of the property no longer complies with the restrictions and requirements of the perpetual conservation easement.

¹⁵ See Chapter 67-528, Laws of Fla.; s. 193.501, F.S.

¹⁶ FLA. CONST. art. VII, s. 3(f).

¹⁷ Section 196.26, F.S.

¹⁸ Section 194.501, F.S.

¹⁹ Section 196.011(1), F.S.

²⁰ Section 196.011(3), F.S.

²¹ Section 196.011(4), F.S.

²² Section 196.011(9)(a), F.S.

²³ See s. 196.011(6), F.S.

²⁴ Section 196.011(1), F.S.

²⁵ Sections 196.011(6)(b) and 193.501(8), F.S.

²⁶ *Id.*

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the bill will not reduce state or local revenues.

B. Private Sector Impact:

Property owners will no longer have to apply annually to maintain their tax exemption.

C. Government Sector Impact:

Property appraisers will have to process fewer renewal applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.011 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on October 20, 2015:

Clarifies that a property owner is not required to file a renewal application until the use of

the property no longer complies with the restrictions and requirements of the conservation easement.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
