

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 Conservation Easements
SPONSOR(S): McGhee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Moore, R.	Harrington
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) State Affairs Committee	18 Y, 0 N	Moore, R.	Camechis

SUMMARY ANALYSIS

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking. They must be recorded and indexed in the same manner as any other instrument affecting the title to real property. Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement. Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation.

Once an original application for tax exemption has been granted for real property dedicated in perpetuity for conservation purposes, the property appraiser must mail a renewal application to the property owner, on or before February 1, in each succeeding year. The property owner must certify on the form that the use of the property complies with the restrictions and requirements of the conservation easement. The exemption will not be renewed unless the application is returned to the property appraiser.

The bill removes the annual application requirement and provides that, once an original application for an 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 bill is effective July 1, 2016.

The Revenue Estimating Conference determined this bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Conservation Easements

A conservation easement is a right or interest in real property which is appropriate for:

- Retaining land or water areas predominantly in their natural, scenic, open, agricultural, 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 cultural significance; or
- Maintaining existing land uses.¹

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; or
- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.²

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.³ Condemnation or eminent domain proceedings involving lands with a conservation easement are allowed if it is for the construction or operation of linear facilities (e.g., electric, telecommunication, or pipeline transmission lines and distribution facilities, public transportation corridors).⁴ Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.⁵

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.⁶ They must be recorded and indexed in the

¹ Section 704.06(1), F.S.

² *Id.*

³ Section 704.06(2), F.S.

⁴ Section 704.06(11), F.S.

⁵ Section 704.06(3), F.S.

⁶ Section 704.06(2), F.S.

same manner as any other instrument affecting the title to real property.⁷ Recording of the conservation easement gives notice to the property appraiser and tax collector of the conservation easement.⁸

Ad Valorem Taxes – Generally

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,⁹ and it provides for specified assessment limitations, property classifications and exemptions.¹⁰ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.¹¹

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹²

Ad Valorem Tax Exemption for Real Property Dedicated in Perpetuity for Conservation Purposes

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.¹³

Land that is dedicated in perpetuity¹⁴ for conservation purposes¹⁵ and that is used exclusively for conservation purposes is exempt from ad valorem taxation.¹⁶ Additionally, land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial uses¹⁷ is exempt from ad valorem taxation up to 50 percent of the assessed value of the land.¹⁸ If the allowed commercial use includes agriculture, the use must comply with the most recent best management practices adopted by the Department of Agriculture and Consumer Services.¹⁹

If the land is less than 40 contiguous acres, the exemption will not apply unless the Acquisition and Restoration Council (ARC)²⁰ determines the use of the land for conservation purposes fulfills a clearly delineated state conservation policy and yields a significant public benefit.²¹ The ARC, in making its public benefit determination, must give particular consideration to land that:

⁷ Section 704.06(5), F.S.

⁸ Section 704.06(7), F.S.

⁹ Fla. Const. art. VII, s. 4.

¹⁰ Fla. Const. art. VII, ss. 3, 4, and 6.

¹¹ Section 196.031, F.S.

¹² *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

¹³ Fla. Const. art. VII, s. 3(f).

¹⁴ "Dedicated in perpetuity" is defined in s. 196.26(1)(d), F.S., to mean the land is encumbered by an irrevocable, perpetual conservation easement.

¹⁵ "Conservation purposes" is defined in s. 196.26(1)(c), F.S., as:

1. Serving a conservation purpose, as defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. s. 170(h); or
- 2.a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces;
- b. Retention of such lands as suitable habitat for fish, plants, or wildlife; or
- c. Retention of such lands' natural value for water quality enhancement or water recharge.

¹⁶ Section 196.26(2), F.S.

¹⁷ "Allowed commercial uses" is defined in s. 196.26(1)(a), F.S., as commercial uses that are allowed by the conservation easement encumbering the land.

¹⁸ Section 196.26(3), F.S.

¹⁹ Section 196.26(7), F.S.

²⁰ The ARC is created in s. 259.035, F.S.

²¹ Section 196.26(4), F.S.

- Contains a natural sinkhole or natural spring that serves a water recharge or production function;
- Contains a unique geological feature;
- Provides habitat for endangered or threatened species;
- Provides nursery habitat for marine and estuarine species;
- Provides protection or restoration of vulnerable coastal areas;
- Preserves natural shoreline habitat; or
- Provides retention of natural open space in otherwise densely built-up areas.²²

The ARC maintains a list of nonprofit entities that are qualified to enforce the provisions of the conservation easement.²³

Conservation easements must include baseline documentation regarding the natural values to be protected on the land and may include a management plan that details the management of the land to effectuate the conservation of natural resources on the land, unless the land needs approval from the ARC.²⁴ Lands approved by the ARC must have a management plan and a designated manager for implementing the management plan.²⁵

Buildings, structures, and other improvements on land receiving the exemption and the land area immediately surrounding the buildings, structures, and improvements must be assessed separately under ch. 193, F.S.²⁶ Structures and other improvements that are auxiliary to the use of the land for conservation purposes are exempt to the same extent as the underlying land.²⁷

Ad Valorem Tax Exemption Application and Annual Renewal 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;²⁸ however, there are exceptions. For instance, certain types of properties are exempt from the annual application,²⁹ a property appraiser may modify the annual application requirement in some situations,³⁰ and a county may waive the annual application requirement for most exemptions.³¹ Applications filed after the first year the exemption is granted are referred to as “renewal applications.”³² Failure to timely file a required application constitutes a waiver of the exemption for that year.³³

Florida currently requires annual application for the ad valorem exemption for property subject to a perpetual conservation easement.³⁴ Property owners must apply by March 1.³⁵ Once an original application³⁶ for tax exemption has been granted, the property appraiser must mail a renewal application³⁷ to the property owner, on or before February 1, in each succeeding year.³⁸ The property owner must certify on the form that the use of the property complies with the restrictions and

²² *Id.*

²³ Section 196.26(9), F.S.

²⁴ Section 196.26(5), F.S.

²⁵ Section 196.26(4), F.S.

²⁶ Section 196.26(6), F.S.

²⁷ *Id.*

²⁸ Section 196.011(1), F.S.

²⁹ Section 196.011(3), F.S.

³⁰ Section 196.011(4), F.S.

³¹ Section 196.011(9)(a), F.S.

³² *See s.* 196.011(6), F.S.

³³ Section 196.011(1), F.S.

³⁴ Section 196.011(6)(b), F.S.

³⁵ *Id.*

³⁶ Real Property Dedicated in Perpetuity for Conservation Exemption Application, available at <http://dor.myflorida.com/dor/property/forms/current/dr418c.pdf>.

³⁷ Real Property Dedicated in Perpetuity for Conservation Exemption Renewal Application, available at <http://dor.myflorida.com/dor/property/forms/current/dr418cr.pdf>.

³⁸ Section 196.011(6)(b), F.S.

requirements of the conservation easement.³⁹ The exemption will not be renewed unless the application is returned to the property appraiser.⁴⁰

The property appraiser must accept the renewal application as evidence of exemption unless the application is denied.⁴¹ Upon denial, the property appraiser must serve by first-class mail, on or before July 1, a notice to the applicant setting forth the grounds for denial.⁴² An applicant objecting to the denial may file a petition as provided for in s. 194.011(3), F.S.⁴³

Notice to Property Appraiser of Ineligibility of Ad Valorem Tax Exemption

The owner of any property granted an exemption for real property dedicated in perpetuity for conservation purposes must promptly notify the property appraiser whenever the use of the property no longer complies with the restrictions and requirements of the conservation easement.⁴⁴ If the property owner fails to notify the property appraiser and the property appraiser determines that for any year within the preceding 10 years the owner was not entitled to receive the exemption, the property owner is subject to taxes exempted as a result of the failure plus 18 percent interest per annum and a penalty of 100 percent of the taxes exempted.⁴⁵

Effect of Proposed Changes

The bill removes the annual application requirement and provides that, once an original application for an 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 bill is effective July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.011(6)(b), F.S., regarding annual renewal application requirements for real property dedicated in perpetuity for conservation purposes.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: See Fiscal Comments.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 196.011(6)(a), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 196.011(9)(b), F.S.

⁴⁵ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector because it deletes the annual renewal application to maintain the ad valorem tax exemption and the consequences of a property owner's failure to return the renewal application.

D. FISCAL COMMENTS:

On October 2, 2015, the Revenue Estimating Conference determined this bill has no fiscal impact on state or local tax revenues. However, the bill may have a positive fiscal impact on local governments because property appraisers will no longer be required to mail annual renewal applications to property owners.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR suggests that the bill may cause confusion because a property owner would be required to submit a renewal application when the use of the property no longer complies with the restrictions and requirements of the conservation easement. DOR suggests the property owner notify the property appraiser when the use of the property no longer complies with the restrictions and requirements of the conservation easement, rather than submit a renewal application.⁴⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁴⁶ DOR Legislative Bill Analysis for HB 501, on file with the Agriculture & Natural Resources Subcommittee.
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