

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 190

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Conservation Easements

DATE: October 19, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			FT	
3.			AP	

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**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 has been granted under s. 196.26, F.S., 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.

**II. Present Situation:**

**Property Valuation in Florida**

Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”<sup>1</sup> The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

***Just Value***

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value or what a willing buyer would pay a willing seller for the property in an arms-length transaction.<sup>2</sup>

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<sup>1</sup> FLA. CONST. art. VII, s. 2.

<sup>2</sup> 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).

### ***Assessed Value***

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.<sup>3</sup> 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 its character or use.<sup>4</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>5</sup> Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.<sup>6</sup> Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents who are 62 or older.<sup>7</sup> The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.<sup>8</sup> Certain working waterfront property is assessed based upon the property's current use.<sup>9</sup>

### ***Taxable Value***

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by the Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.<sup>10</sup>

### **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..." Subsection (1) 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.<sup>11</sup> 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.<sup>12</sup> Conservation easements run with the land

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<sup>3</sup> The constitutional provisions in Art. VII, section 4 of the Florida Constitution are implemented in Part II of ch. 193, F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 4(a).

<sup>5</sup> FLA. CONST. art. VII, s. 4(b).

<sup>6</sup> FLA. CONST. art. VII, s. 4(e).

<sup>7</sup> FLA. CONST. art. VII, s. 4(f).

<sup>8</sup> FLA. CONST. art. VII, s. 4(i).

<sup>9</sup> FLA. CONST. art. VII, s. 4(j).

<sup>10</sup> FLA. CONST. art. VII, ss. 3 and 6.

<sup>11</sup> Section 704.06(2).

<sup>12</sup> Section 704.06(3).

and are binding on all subsequent owners.<sup>13</sup> Conservation easements must be recorded in the same manner as any other instrument affecting the title to real property.<sup>14</sup>

#### **Amendment 4 to the Florida Constitution (2008)**

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.<sup>15</sup> The amendment also provided that land used for conservation purposes shall be classified by general law and assessed solely on the basis of use, subject to conditions, limitations, and reasonable definitions as provided by general law.<sup>16</sup> The amendment was proposed by the Tax and Budget Reform Commission and approved by 68 percent of the voters.

#### **Conservation Easement Exemption**

The 2009 Legislature, in its implementing legislation for Constitutional Amendment 4, provided for exemptions from ad valorem taxation for lands dedicated in perpetuity for conservation purposes. Section 196.26(2), F.S. states that:

Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation." The phrase "dedicated in perpetuity" is defined as "land encumbered by an irrevocable, perpetual conservation easement."<sup>17</sup>

Section 196.26(4), F.S. goes on to state that:

Land that comprises less than 40 contiguous acres does not qualify for the exemption provided in this section unless in addition to meeting the other requirements of this section, the use of the land for conservation purposes is determined by the Acquisition and Restoration Council created in s. 259.035 to fulfill a clearly delineated state conservation policy and yield a significant public benefit. In making its determination of public benefit, the Acquisition and Restoration Council must give particular consideration to land that:

- (a) Contains a natural sinkhole or natural spring that serves a water recharge or production function;
- (b) Contains a unique geological feature;
- (c) Provides habitat for endangered or threatened species;
- (d) Provides nursery habitat for marine and estuarine species;
- (e) Provides protection or restoration of vulnerable coastal areas;
- (f) Preserves natural shoreline habitat; or

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<sup>13</sup> Section 704.06(4).

<sup>14</sup> Section 704.06(5).

<sup>15</sup> FLA. CONST. art. VII, s. 3(f).

<sup>16</sup> FLA. CONST. art. VII, s. 4(b).

<sup>17</sup> Section 196.26(1)(d).

(g) Provides retention of natural open space in otherwise densely built-up areas.

Any land approved by the Acquisition and Restoration Council under this subsection must have a management plan and a designated manager who will be responsible for implementing the management plan.

The statute further requires that the conservation easement that serves as the basis for the exemption must include baseline documentation as to the natural values to be protected on the land, and that structures and other improvements situated on lands receiving the exemption and the land immediately surrounding such buildings and improvements must be assessed separately.<sup>18</sup>

### **Annual Application for Exemption**

Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which the exemption is claimed and certifying its ownership and use.<sup>19</sup> However, a property owner may be exempt from the annual application,<sup>20</sup> a property appraiser may modify the annual application requirement,<sup>21</sup> and a county may waive the annual application requirement.<sup>22</sup> Failure to timely file an application constitutes a waiver of the exemption privilege for that year.<sup>23</sup> An exemption from annual application currently exists for the following properties<sup>24</sup>:

- Houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, burial grounds and tombs owned by houses of public worship, individually owned burial rights not held for speculation, or other such property not rented or hired out for other than religious or educational purposes at any time;
- Household goods and personal effects of permanent resident of this state; and
- Property of the state or any county, any municipality, any school district, or community college district thereof.

### **Use-based Taxation for Conservation Easements**

Section 193.501, F.S., requires a property owner to file an annual application with a property appraiser for the assessment of any land subject to a conservation easement as described in s. 704.06 for a term not less than 10 years. Under this section, the land is assessed at its present use rather than its best use. This allows the land to be assessed at a reduced value, but it is not an exemption. Section 193.501, F.S. provides that “the property appraiser, in valuing such land for tax purposes, shall consider no factors other than those relative to its value for the present use, as restricted by any conveyance or covenant under this section.” If a conservation easement is for a

<sup>18</sup> Section 196.26(5) and (6).

<sup>19</sup> Section 196.011(1).

<sup>20</sup> Section 196.011(3).

<sup>21</sup> Section 196.011(4).

<sup>22</sup> Section 196.011(9)(a).

<sup>23</sup> Section 196.011(1).

<sup>24</sup> Section 196.011(3).

term less than 10 years, then the land is assessed under s. 193.011, F.S., and does not receive preferential tax treatment.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 196.011, F.S., by providing that once an original application for ad valorem tax exemption 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.

**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:

None.

B. Private Sector Impact:

A property owner is relieved of the burden of applying annually to maintain their tax exemption.

C. Government Sector Impact:

A county property appraiser may see a reduction in the number of renewal applications received.

### **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.