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HB 7157, Engrossed 3

2009 Legislature

1 A bill to be entitled
2 An act relating to real property used for conservation
3 purposes; creating s. 196.26, F.S.; providing definitions;
4 providing for a full exemption for land dedicated in
5 perpetuity and used exclusively for conservation purposes;
6 providing a partial ad valorem tax exemption for
7 conservation land that is used for commercial purposes;
8 permitting land smaller than a certain size to qualify for
9 the exemption upon approval by the Acquisition and
10 Restoration Council; requiring the Acquisition and
11 Restoration Council to consider whether the property will
12 yield a significant public benefit; specifying criteria;
13 requiring approved lands to have a management plan;
14 specifying baseline documentation required for certain
15 conservation easements; providing for the assessment of
16 buildings and structures on exempted lands; exempting
17 certain structures and improvements from certain
18 assessments; requiring best management practices to be
19 used for certain agricultural lands; providing for third-
20 party conservation easement enforcement rights to water
21 management districts under certain circumstances;
22 requiring the Acquisition and Restoration Council to
23 maintain a list of certain enforcement entities; amending
24 s. 193.501, F.S.; revising a cross-reference; requiring
25 the owner of the land to annually apply to the property
26 appraiser by a certain date for the assessment based on
27 character or use; authorizing the property appraiser or
28 value adjustment board to grant late applications for such

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29 assessments if extenuating circumstances are shown;
30 providing application requirements; providing for a
31 nonrefundable fee; providing for waiver of the annual
32 filing requirement under certain circumstances; requiring
33 a landowner to notify the property appraiser if the land
34 becomes ineligible for the assessment benefit; imposing
35 penalties for nonpayment of ad valorem taxes after a loss
36 of eligibility for the assessment benefit; directing the
37 property appraiser to record a notice of tax lien;
38 amending s. 704.06, F.S.; requiring owners of property
39 encumbered by a conservation easement to comply with
40 marketable record title requirements to preserve the
41 easement in perpetuity; amending s. 195.073, F.S.;
42 specifying an additional real property assessment
43 classification; amending s. 196.011, F.S.; providing
44 requirements and procedures for renewal applications for
45 exemptions for real property dedicated in perpetuity for
46 conservation purposes; requiring owners of such property
47 to notify the property appraiser when use of the property
48 no longer qualifies for the exemption; providing penalties
49 for failure to notify; providing for application of
50 certain lien provisions; amending s. 192.0105, F.S.;
51 conforming a cross-reference; creating s. 218.125, F.S.;
52 requiring the Legislature to appropriate moneys to offset
53 the reductions in ad valorem tax revenue experienced by
54 fiscally constrained counties; requiring each fiscally
55 constrained county to apply to the Department of Revenue
56 to participate in the distribution of the appropriation;

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57 specifying the documentation that must be provided to the
 58 department; providing a formula for calculating the
 59 reduction in ad valorem tax revenue; authorizing the
 60 department to adopt emergency rules effective for a
 61 specified period; providing for renewal of such rules;
 62 providing applicability; providing an effective date.

63
 64 Be It Enacted by the Legislature of the State of Florida:

65
 66 Section 1. Section 196.26, Florida Statutes, is created to
 67 read:

68 196.26 Exemption for real property dedicated in perpetuity
 69 for conservation purposes.--

70 (1) As used in this section:

71 (a) "Allowed commercial uses" means commercial uses that
 72 are allowed by the conservation easement encumbering the land
 73 exempt from taxation under this section.

74 (b) "Conservation easement" means the property right
 75 described in s. 704.06.

76 (c) "Conservation purposes" means:

77 1. Serving a conservation purpose, as defined in 26 U.S.C.
 78 s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of
 79 a qualified conservation contribution under 26 U.S.C. s. 170(h);

80 or

81 2.a. Retention of the substantial natural value of land,
 82 including woodlands, wetlands, water courses, ponds, streams,
 83 and natural open spaces;

84 b. Retention of such lands as suitable habitat for fish,

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85 plants, or wildlife; or

86 c. Retention of such lands' natural value for water
 87 quality enhancement or water recharge.

88 (d) "Dedicated in perpetuity" means that the land is
 89 encumbered by an irrevocable, perpetual conservation easement.

90 (2) Land that is dedicated in perpetuity for conservation
 91 purposes and that is used exclusively for conservation purposes
 92 is exempt from ad valorem taxation. Such exclusive use does not
 93 preclude the receipt of income from activities that are
 94 consistent with a management plan when the income is used to
 95 implement, maintain, and manage the management plan.

96 (3) Land that is dedicated in perpetuity for conservation
 97 purposes and that is used for allowed commercial uses is exempt
 98 from ad valorem taxation to the extent of 50 percent of the
 99 assessed value of the land.

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

109 (a) Contains a natural sinkhole or natural spring that
 110 serves a water recharge or production function;

111 (b) Contains a unique geological feature;

112 (c) Provides habitat for endangered or threatened species;

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113 (d) Provides nursery habitat for marine and estuarine
 114 species;

115 (e) Provides protection or restoration of vulnerable
 116 coastal areas;

117 (f) Preserves natural shoreline habitat; or

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

120

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

125 (5) The conservation easement that serves as the basis for
 126 the exemption granted by this section must include baseline
 127 documentation as to the natural values to be protected on the
 128 land and may include a management plan that details the
 129 management of the land so as to effectuate the conservation of
 130 natural resources on the land.

131 (6) Buildings, structures, and other improvements situated
 132 on land receiving the exemption provided in this section and the
 133 land area immediately surrounding the buildings, structures, and
 134 improvements must be assessed separately pursuant to chapter
 135 193. However, structures and other improvements that are
 136 auxiliary to the use of the land for conservation purposes are
 137 exempt to the same extent as the underlying land.

138 (7) Land that qualifies for the exemption provided in this
 139 section the allowed commercial uses of which include agriculture
 140 must comply with the most recent best management practices if

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141 adopted by rule of the Department of Agriculture and Consumer
 142 Services.

143 (8) As provided in s. 704.06(8) and (9), water management
 144 districts with jurisdiction over lands receiving the exemption
 145 provided in this section have a third-party right of enforcement
 146 to enforce the terms of the applicable conservation easement for
 147 any easement that is not enforceable by a federal or state
 148 agency, county, municipality, or water management district when
 149 the holder of the easement is unable or unwilling to enforce the
 150 terms of the easement.

151 (9) The Acquisition and Restoration Council, created in s.
 152 259.035, shall maintain a list of nonprofit entities that are
 153 qualified to enforce the provisions of a conservation easement.

154 Section 2. Subsection (1) of section 193.501, Florida
 155 Statutes, is amended, and subsections (8) and (9) are added to
 156 that section, to read:

157 193.501 Assessment of lands subject to a conservation
 158 easement, environmentally endangered lands, or lands used for
 159 outdoor recreational or park purposes when land development
 160 rights have been conveyed or conservation restrictions have been
 161 covenanted.--

162 (1) The owner or owners in fee of any land subject to a
 163 conservation easement as described in s. 704.06~~(1)~~; land
 164 qualified as environmentally endangered pursuant to paragraph
 165 (6)(i) and so designated by formal resolution of the governing
 166 board of the municipality or county within which such land is
 167 located; land designated as conservation land in a comprehensive
 168 plan adopted by the appropriate municipal or county governing

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169 body; or any land which is utilized for outdoor recreational or
 170 park purposes may, by appropriate instrument, for a term of not
 171 less than 10 years:

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

177 (b) Covenant with the governing board of any public agency
 178 in this state within which the land is located, or with the
 179 Board of Trustees of the Internal Improvement Trust Fund, or
 180 with a charitable corporation or trust as described in s.
 181 704.06(3), that such land be subject to one or more of the
 182 conservation restrictions provided in s. 704.06(1) or not be
 183 used by the owner for any purpose other than outdoor
 184 recreational or park purposes. If land is covenanted and used
 185 for an outdoor recreational purpose, the normal use and
 186 maintenance of the land for that purpose, consistent with the
 187 covenant, shall not be restricted.

188 (8) A person or organization that, on January 1, has the
 189 legal title to land that is entitled by law to assessment under
 190 this section shall, on or before March 1 of each year, file an
 191 application for assessment under this section with the county
 192 property appraiser. The application must identify the property
 193 for which assessment under this section is claimed. The initial
 194 application for assessment for any property must include a copy
 195 of the instrument by which the development right is conveyed or
 196 which establishes a covenant that establishes the conservation

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197 purposes for which the land is used. The Department of Revenue
198 shall prescribe the forms upon which the application is made.
199 The failure to file an application on or before March 1 of any
200 year constitutes a waiver of assessment under this section for
201 that year. However, an applicant who is qualified to receive an
202 assessment under this section but fails to file an application
203 by March 1 may file an application for the assessment and may
204 file, pursuant to s. 194.011(3), a petition with the value
205 adjustment board requesting that the assessment be granted. The
206 petition must be filed at any time during the taxable year on or
207 before the 25th day following the mailing of the notice by the
208 property appraiser pursuant to s. 194.011(1). Notwithstanding s.
209 194.013, the applicant must pay a nonrefundable fee of \$15 upon
210 filing the petition. Upon reviewing the petition, if the person
211 is qualified to receive the assessment and demonstrates
212 particular extenuating circumstances judged by the property
213 appraiser or the value adjustment board to warrant granting the
214 assessment, the property appraiser or the value adjustment board
215 may grant the assessment. The owner of land that was assessed
216 under this section in the previous year and whose ownership or
217 use has not changed may reapply on a short form as provided by
218 the department. A county may, at the request of the property
219 appraiser and by a majority vote of its governing body, waive
220 the requirement that an annual application or statement be made
221 for assessment of property within the county. Such waiver may be
222 revoked by a majority vote of the governing body of the county.

223 (9) A person or entity that owns land assessed pursuant to
224 this section must notify the property appraiser promptly if the

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225 land becomes ineligible for assessment under this section. If
 226 any property owner fails to notify the property appraiser and
 227 the property appraiser determines that for any year within the
 228 preceding 10 years the land was not eligible for assessment
 229 under this section, the owner of the land is subject to taxes
 230 avoided as a result of such failure plus 15 percent interest per
 231 annum and a penalty of 50 percent of the taxes avoided. The
 232 property appraiser making such determination shall record in the
 233 public records of the county a notice of tax lien against any
 234 property owned by that person or entity in the county, and such
 235 property must be identified in the notice of tax lien. The
 236 property is subject to a lien in the amount of the unpaid taxes
 237 and penalties. The lien when filed shall attach to any property
 238 identified in the notice of tax lien which is owned by the
 239 person or entity and which was improperly assessed. If such
 240 person or entity no longer owns property in that county but owns
 241 property in some other county or counties of this state, the
 242 property appraiser shall record a notice of tax lien in such
 243 other county or counties, identifying the property owned by such
 244 person or entity.

245 Section 3. Subsection (12) is added to section 704.06,
 246 Florida Statutes, to read:

247 704.06 Conservation easements; creation; acquisition;
 248 enforcement.--

249 (12) An owner of property encumbered by a conservation
 250 easement must abide by the requirements of chapter 712 or any
 251 other similar law or rule to preserve the conservation easement
 252 in perpetuity.

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253 Section 4. Subsection (1) of section 195.073, Florida
 254 Statutes, is amended to read:

255 195.073 Classification of property.--All items required by
 256 law to be on the assessment rolls must receive a classification
 257 based upon the use of the property. The department shall
 258 promulgate uniform definitions for all classifications. The
 259 department may designate other subclassifications of property.
 260 No assessment roll may be approved by the department which does
 261 not show proper classifications.

262 (1) Real property must be classified according to the
 263 assessment basis of the land into the following classes:

264 (a) Residential, subclassified into categories, one
 265 category for homestead property and one for nonhomestead
 266 property:

- 267 1. Single family.
- 268 2. Mobile homes.
- 269 3. Multifamily.
- 270 4. Condominiums.
- 271 5. Cooperatives.
- 272 6. Retirement homes.
- 273 (b) Commercial and industrial.
- 274 (c) Agricultural.
- 275 (d) Nonagricultural acreage.
- 276 (e) High-water recharge.
- 277 (f) Historic property used for commercial or certain
 278 nonprofit purposes.
- 279 (g) Exempt, wholly or partially.
- 280 (h) Centrally assessed.

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- 281 (i) Leasehold interests.
- 282 (j) Time-share property.
- 283 (k) Land assessed under s. 193.501.
- 284 (l)~~(k)~~ Other.

285 Section 5. Subsections (6) and (9) of section 196.011,
 286 Florida Statutes, are amended to read:

287 196.011 Annual application required for exemption.--

288 (6) (a) Once an original application for tax exemption has
 289 been granted, in each succeeding year on or before February 1,
 290 the property appraiser shall mail a renewal application to the
 291 applicant, and the property appraiser shall accept from each
 292 such applicant a renewal application on a form ~~to be~~ prescribed
 293 by the Department of Revenue. Such renewal application shall be
 294 accepted as evidence of exemption by the property appraiser
 295 unless he or she denies the application. Upon denial, the
 296 property appraiser shall serve, on or before July 1 of each
 297 year, a notice setting forth the grounds for denial on the
 298 applicant by first-class mail. Any applicant objecting to such
 299 denial may file a petition as provided for in s. 194.011(3).

300 (b) Once an original application for tax exemption has
 301 been granted under s. 196.26, in each succeeding year on or
 302 before February 1, the property appraiser shall mail a renewal
 303 application to the applicant on a form prescribed by the
 304 Department of Revenue. The applicant must certify on the form
 305 that the use of the property complies with the restrictions and
 306 requirements of the conservation easement. The form shall
 307 include a statement that the exemption granted under s. 196.26

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308 will not be renewed unless the application is returned to the
309 property appraiser.

310 (9) (a) A county may, at the request of the property
311 appraiser and by a majority vote of its governing body, waive
312 the requirement that an annual application or statement be made
313 for exemption of property within the county after an initial
314 application is made and the exemption granted. The waiver under
315 this subsection of the annual application or statement
316 requirement applies to all exemptions under this chapter except
317 the exemption under s. 196.1995. Notwithstanding such waiver,
318 refiling of an application or statement shall be required when
319 any property granted an exemption is sold or otherwise disposed
320 of, when the ownership changes in any manner, when the applicant
321 for homestead exemption ceases to use the property as his or her
322 homestead, or when the status of the owner changes so as to
323 change the exempt status of the property. In its deliberations
324 on whether to waive the annual application or statement
325 requirement, the governing body shall consider the possibility
326 of fraudulent exemption claims which may occur due to the waiver
327 of the annual application requirement. ~~It is the duty of~~ The
328 owner of any property granted an exemption who is not required
329 to file an annual application or statement shall ~~to~~ notify the
330 property appraiser promptly whenever the use of the property or
331 the status or condition of the owner changes so as to change the
332 exempt status of the property. If any property owner fails to so
333 notify the property appraiser and the property appraiser
334 determines that for any year within the prior 10 years the owner
335 was not entitled to receive such exemption, the owner of the

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336 property is subject to the taxes exempted as a result of such
 337 failure plus 15 percent interest per annum and a penalty of 50
 338 percent of the taxes exempted. Except for homestead exemptions
 339 controlled by s. 196.161, ~~it is the duty of~~ the property
 340 appraiser making such determination shall ~~to~~ record in the
 341 public records of the county a notice of tax lien against any
 342 property owned by that person or entity in the county, and such
 343 property must be identified in the notice of tax lien. Such
 344 property is subject to the payment of all taxes and penalties.
 345 Such lien when filed shall attach to any property, identified in
 346 the notice of tax lien, owned by the person who illegally or
 347 improperly received the exemption. If ~~Should~~ such person no
 348 longer owns ~~own~~ property in that county, but owns ~~own~~ property
 349 in some other county or counties in the state, ~~it shall be the~~
 350 ~~duty of~~ the property appraiser shall ~~to~~ record a notice of tax
 351 lien in such other county or counties, identifying the property
 352 owned by such person or entity in such county or counties, and
 353 it shall become a lien against such property in such county or
 354 counties.

355 (b) The owner of any property granted an exemption under
 356 s. 196.26 shall notify the property appraiser promptly whenever
 357 the use of the property no longer complies with the restrictions
 358 and requirements of the conservation easement. If the property
 359 owner fails to so notify the property appraiser and the property
 360 appraiser determines that for any year within the preceding 10
 361 years the owner was not entitled to receive the exemption, the
 362 owner of the property is subject to taxes exempted as a result
 363 of the failure plus 18 percent interest per annum and a penalty

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364 of 100 percent of the taxes exempted. The provisions for tax
 365 liens in paragraph (a) apply to property granted an exemption
 366 under s. 196.26.

367 (c)~~(b)~~ A county may, at the request of the property
 368 appraiser and by a majority vote of its governing body, waive
 369 the requirement that an annual application be made for the
 370 veteran's disability discount granted pursuant to s. 6(g), Art.
 371 VII of the State Constitution after an initial application is
 372 made and the discount granted. ~~It is the duty of~~ The disabled
 373 veteran receiving a discount for which annual application has
 374 been waived shall ~~to~~ notify the property appraiser promptly
 375 whenever the use of the property or the percentage of disability
 376 to which the veteran is entitled changes. If a disabled veteran
 377 fails to notify the property appraiser and the property
 378 appraiser determines that for any year within the prior 10 years
 379 the veteran was not entitled to receive all or a portion of such
 380 discount, the penalties and processes in paragraph (a) relating
 381 to the failure to notify the property appraiser of ineligibility
 382 for an exemption shall apply.

383 (d)~~(e)~~ For any exemption under s. 196.101(2), the
 384 statement concerning gross income must be filed with the
 385 property appraiser not later than March 1 of every year.

386 (e)~~(d)~~ If an exemption for which the annual application is
 387 waived pursuant to this subsection will be denied by the
 388 property appraiser in the absence of the refiling of the
 389 application, notification of an intent to deny the exemption
 390 shall be mailed to the owner of the property prior to February
 391 1. If the property appraiser fails to timely mail such notice,

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392 the application deadline for such property owner pursuant to
393 subsection (1) shall be extended to 28 days after the date on
394 which the property appraiser mails such notice.

395 Section 6. Paragraph (c) of subsection (2) of section
396 192.0105, Florida Statutes, is amended to read:

397 192.0105 Taxpayer rights.--There is created a Florida
398 Taxpayer's Bill of Rights for property taxes and assessments to
399 guarantee that the rights, privacy, and property of the
400 taxpayers of this state are adequately safeguarded and protected
401 during tax levy, assessment, collection, and enforcement
402 processes administered under the revenue laws of this state. The
403 Taxpayer's Bill of Rights compiles, in one document, brief but
404 comprehensive statements that summarize the rights and
405 obligations of the property appraisers, tax collectors, clerks
406 of the court, local governing boards, the Department of Revenue,
407 and taxpayers. Additional rights afforded to payors of taxes and
408 assessments imposed under the revenue laws of this state are
409 provided in s. 213.015. The rights afforded taxpayers to assure
410 that their privacy and property are safeguarded and protected
411 during tax levy, assessment, and collection are available only
412 insofar as they are implemented in other parts of the Florida
413 Statutes or rules of the Department of Revenue. The rights so
414 guaranteed to state taxpayers in the Florida Statutes and the
415 departmental rules include:

416 (2) THE RIGHT TO DUE PROCESS.--

417 (c) The right to file a petition for exemption or
418 agricultural classification with the value adjustment board when
419 an application deadline is missed, upon demonstration of

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420 particular extenuating circumstances for filing late (see ss.
 421 193.461(3)(a) and 196.011(1), (7), (8), and (9) ~~(e)-(d)~~).

422 Section 7. Section 218.125, Florida Statutes, is created
 423 to read:

424 218.125 Offset for tax loss associated with certain
 425 constitutional amendments affecting fiscally constrained
 426 counties.--

427 (1) Beginning in the 2010-2011 fiscal year, the
 428 Legislature shall appropriate moneys to offset the reductions in
 429 ad valorem tax revenue experienced by fiscally constrained
 430 counties, as defined in s. 218.67(1), which occur as a direct
 431 result of the implementation of revisions of ss. 3(f) and 4(b)
 432 of Art. VII of the State Constitution which were approved in the
 433 general election held in November 2008. The moneys appropriated
 434 for this purpose shall be distributed in January of each fiscal
 435 year among the fiscally constrained counties based on each
 436 county's proportion of the total reduction in ad valorem tax
 437 revenue resulting from the implementation of the revisions.

438 (2) On or before November 15 of each year, beginning in
 439 2010, each fiscally constrained county shall apply to the
 440 Department of Revenue to participate in the distribution of the
 441 appropriation and provide documentation supporting the county's
 442 estimated reduction in ad valorem tax revenue in the form and
 443 manner prescribed by the Department of Revenue. The
 444 documentation must include an estimate of the reduction in
 445 taxable value directly attributable to revisions of Art. VII of
 446 the State Constitution for all county taxing jurisdictions
 447 within the county and shall be prepared by the property

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448 appraiser in each fiscally constrained county. The documentation
449 must also include the county millage rates applicable in all
450 such jurisdictions for the current year and the prior year,
451 rolled-back rates determined as provided in s. 200.065 for each
452 county taxing jurisdiction, and maximum millage rates that could
453 have been levied by majority vote pursuant to s. 200.185. For
454 purposes of this section, each fiscally constrained county's
455 reduction in ad valorem tax revenue shall be calculated as 95
456 percent of the estimated reduction in taxable value multiplied
457 by the lesser of the 2010 applicable millage rate or the
458 applicable millage rate for each county taxing jurisdiction in
459 the prior year.

460 Section 8. The Department of Revenue may adopt emergency
461 rules to administer s. 196.26, Florida Statutes, as created by
462 this act. The emergency rules shall remain in effect for 6
463 months after adoption and may be renewed during the pendency of
464 procedures to adopt rules addressing the subject of the
465 emergency rules.

466 Section 9. This act shall take effect upon becoming a law
467 and shall apply to property tax assessments made on or after
468 January 1, 2010.