



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure:	COMBINED CS/CP'S 15 & 16, First Engrossed	REFERENCE:	ACTION:
Sponsor:	Commissioner Yablonski	1. F&T	Favorable
Subject:	Ad Valorem Tax Exemption	2. GPSC	Favorable
		3. TBRC	Favorable
		4. Style/Drafting	Recommended
		5. TBRC	Pre-meeting
Date:	April 22, 2008		

I. Summary:

This measure requires the Legislature to provide a property tax exemption for real property encumbered by perpetual conservation easements or other perpetual conservation protections, defined by general law. This measure also requires the Legislature to provide for classification and assessment of land used for conservation purposes, and not perpetually encumbered, solely on the basis of character or use. The assessment benefit for conservation land that is not perpetually encumbered is subject to conditions, limitations, and reasonable definitions established by general law. The Legislature must implement these property tax changes for property tax levies beginning in 2010.

II. Present Situation:

Property Tax Exemptions

Article VII, s. 3 of the Fla. Const. authorizes ad valorem tax exemptions for the following types of real property: certain properties owned by municipalities, certain properties owned by new or expanding businesses, properties containing a renewable energy source device, and certain historic properties. The exemptions do not address land used for conservation purposes.

Just Valuation of Property

Article VII, s. 4 of the Florida Constitution requires all property, with some exceptions, to be assessed at a just valuation for the purposes of ad valorem taxation.¹ "The term 'just valuation' means 'fair market value.'"²

¹ Article VII, s. 4, Fla. Const., states:

Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

To determine the just value or fair market value of a property, property appraisers must consider the eight factors set forth in s. 193.011, F.S. As stated below:

Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

² *Gilreath v. Westgate Datona, Ltd.*, 871 So. 2d 96, 967 (Fla. 5th DCA 2004) (quoting *Mazourek v. Wal-Mart Stores, Inc.*, 831 So. 2d 85, 88 (Fla. 2002)).

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Section 193.461, F.S., provides the statutory authority for classification and assessment of agricultural land. The statute states that the property appraiser must appraise land annually as agricultural or nonagricultural. Only land used primarily for “bona fide agricultural purposes” can be classified as agricultural. The land is reclassified as nonagricultural if the land is no longer used for agricultural purposes. Therefore, in accordance with Art. VII, s. 4, Art. Co nst., if land is no longer used for agricultural purposes and reverts to its natural state or is used for other conservation purposes, the property is assessed at market value.

Conservation Lands

Florida has a long tradition of supporting conservation efforts to protect the environment. The state currently has over 9 million acres in state, federal, and local conservation lands. The Florida National Areas Inventory indicates that the distribution for the acreage includes:

Summary of Florida Conservation Lands

Federal Conservation Lands	4,035,858
State Conservation Lands	5,210,821
Local (County & Municipal) Conservation Lands	386,161
Total State, Federal, and Local	9,632,840
Private Conservation Lands	156,843
Percent of Florida in Locally-Managed Conservation Lands	1.1%
Percent of Florida in State-Managed Conservation Lands	15.0%
Percent of Florida in Federally-Managed Conservation Lands	11.6% ³

The world's largest land acquisition program has been Preservation 2000 and its successor, Florida Forever. However, a Florida Senate Interim Project indicates that the designated entities for which Florida Forever funds are disbursed may be overcommitted in fiscal years 2008-2009 and 2009-2010.⁴

There are several conservation strategies that citizens can currently use to protect the environment with varying benefits. Land donations release the donor of the responsibility to manage the land and can result in income tax deductions and estate benefits. Donating a remainder interest in land provides an opportunity for the donor to continue to live on the land and retain a reserved life estate. Donating land by will allow the donor to own and control the land during the donor's lifetime and designate a recipient to continue the protection of the property. Land donations that establish a life income include the use of a charitable gift annuity. Conservation easement donations include relinquishing some of the rights associated with the land which could qualify as a tax-deductible charitable donation. There are different types of conservation lands which include conservancies, watersheds, and conservation easements. There are also popular initiatives to provide incentives for donating land for conservation purposes at the federal and state level. These initiatives include the Conservation Reserve Program and conservation easement programs.

Conservation Reserve Program

The Conservation Reserve Program (CRP) is a voluntary federal program for agricultural landowners. Through CRP, a landowner can receive annual rental payments and cost-share assistance to establish long-term, resource conserving covers on eligible farmland.

The Commodity Credit Corporation (CCC) makes annual rental payments based on the agriculture rental value of the land, and it provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years.

³ Natural Areas Inventory, Summary of Florida Conservation Lands, 2007, http://www.fnai.org/pdf/maacres_2007-3_fcl.pdf (last visited January, 2008).

⁴Florida Senate Committee on Environmental Preservation and Conservation, Interim Project Summary, 2008-123, January 2008.

CRP protects millions of acres of American topsoil from erosion and is designed to safeguard the Nation's natural resources. By reducing water runoff and sedimentation, CRP protects groundwater and helps improve the condition of lakes, rivers, ponds, and streams. Acreage enrolled in the CRP is planted to resource-conserving vegetative covers, making the program a major contributor to increased wildlife populations in many parts of the country.⁵

Conservation Easement

A conservation easement is a legal agreement between a landowner and a land trust or governmental agency that permanently limits the use of land in order to protect conservation values.⁶

Section 704.06, F.S., provides statutory authorization for conservation easements. The statute states 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, 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 which prohibit or limit:

- 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 or acts detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation, retention of land or water areas or the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.⁷

Each conservation easement is unique and typically customized in consultations between the landowner and the partner organization. It is a legal agreement designed to consider both the landowner's needs and the conservation objectives. The primary purpose of a conservation easement is to protect agricultural land, timber resources, and/or other valuable natural resources such as wildlife habitat, clean water, clean air, or scenic open space by separating the right to subdivide and build on the property from the other rights

⁵ USDA Farm Agency, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp.html> (January 2008).

⁶ The Land Trust Alliance: Conserve Your Land - What is a Conservation Easement, <http://www.lta.org/conserve/easement.html> (January, 2008).

⁷ Florida Statute 704.06, Title XL, Chapter 704.

of ownership. The landowner who gives up these “development rights” continues to privately own and manage the land and may receive significant state and federal tax advantages for having donated the conservation easement.

Benefits for Conservation Easements

There are several financial benefits to landowners who donate property for conservation easements. These include potential federal income tax savings, federal gift and estate tax savings, and federal estate tax exclusions. Internal Revenue Code Section 170(h) provides the requirements that a conservation easement must meet to qualify for federal income and estate tax deductions. The statute outlines three basic tests for qualification, which include:

- A qualified real property interest (perpetual).
- Granted to a qualified organization (a government agency or public charity with conservation goals).
- Granted exclusively for conservation purposes. The four purposes are provision outdoor recreation or educational use for the general public; protection of a relatively natural habitat of fish, wildlife, or plants; preservation of open space or preservation of a historically important land area or a certified historic structure.

There may also be a state property tax benefit if the property receives an agricultural assessment as authorized in Art.VII, s. 4 of the Florida Constitution.

Several states provide incentives for the donation of land for conservation purposes. In 2006, the Georgia Legislature passed House Bill 1107, the Conservation Tax Credit of 2006. The purpose of the conservation tax credit is to increase the financial incentives for a willing landowner to donate land or place a conservation easement on their property. Taxpayers can claim a credit against their state income tax of 25 percent of the fair market value of the donated property, up to a maximum credit of \$250,000 per individual and \$500,000 per corporation. The amount of the credit used in any one year may not exceed the amount of state income tax otherwise due. Any unused portion of the credit may be carried forward for five succeeding years. The property must be donated to a government entity or to a qualified non-profit organization and must meet at least one of the ten conservation goals listed in the Georgia Land Conservation Act. Ineligible lands include those that are already protected from development under local ordinances, lands that are set aside in order to increase building density levels, and lands that are planned for or used for golf courses, soccer fields, softball fields, or other types of intensively managed recreational uses.⁸

III. Effect of Proposed Changes:

This measure requires the Legislature to provide a property tax exemption for real property encumbered by perpetual conservation easements or other perpetual conservation protections, defined by general law. This measure also requires the

⁸ Georgia Land Conservation Program,
http://glcp.georgia.gov/00/channel_modifieddate/0,2096,82613131_96091185,00.html.

Legislature to provide for classification and assessment of land used for conservation purposes, and not perpetually encumbered, solely on the basis of character or use. The assessment benefit for conservation land that is not perpetually encumbered is subject to conditions, limitations, and reasonable definitions established by general law. The Legislature must implement these property tax changes for property tax levies beginning in 2010.

IV. Constitutional Issues:

A. Constitutional or Legislative Matter:

The Florida Constitution requires all property to be valued for ad valorem taxation at market or just value, unless an exception applies. To the extent that the exemption authorized by this measure will provide for the assessment of real property at a value less than market or just value, a constitutional amendment is required.

However, if the benefit conveyed by this measure does not reduce the value of real property below market or just value, then the issue addressed by the measure may be addressed statutorily.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The exemption required by this measure will remove property from the tax rolls and thereby may reduce ad valorem tax revenues to counties, municipalities, special districts, and school districts. The assessment limitation required by this measure may also reduce ad valorem tax revenues to counties, municipalities, special districts, and school districts.

B. Private Sector Impact:

If the exemption and assessment benefit authorized by this measure reduces the number of properties subject to tax and the taxable value of other conservation lands, counties, municipalities, special districts, and school districts may increase ad valorem tax millage rates on other properties to make up the revenue shortfall.

The exemption authorized by the measure likely may reduce the costs to own real property used for conservation purposes, but increase its value.

C. Government Sector Impact:

Under Art. XI, s. 5(d), Fla. Const., the Secretary of State must publish in newspapers throughout the state proposed constitutional amendments and notice of the date of the election at which it will be submitted to the electors. According to the Department of State, the average publishing costs for citizen initiative amendments is \$60,000. However, the cost to publish lengthy amendments will exceed that amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.