



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure:	CP 15	REFERENCE:	ACTION:
Sponsor:	Commissioner Yablonski	1. F&T	Pre-Meeting
Subject:	Ad valorem tax exemption	2. GPSC	
		3.	
Date:	January 10, 2008		

I. Summary:

This proposed amendment requires the Legislature to provide by law for an ad valorem tax exemption for real property used for conservation purposes. The Legislature must define “conservation purposes” by law.

II. Present Situation:

Just Valuation of Property and Tax Exemptions

The Florida Constitution requires that all property, with some exceptions, be assessed at a just valuation for the purposes of ad valorem taxation.¹

Article VII, s. 3 of the Fla. Const. authorizes ad valorem tax exemptions. The exemptions do not address land donated for conservation purposes. The constitutional provision states:

- (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.
- (b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

¹ Article VII, s. 4, Fla. Const.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

(e) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

Conservation Lands

There are different types of conservation lands which include conservancies, watershed, and conservation easements. There are also different programs to provide incentives for donating land for conservation purposes at the federal and state level.

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.

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.²

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.³

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.⁴

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.

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³ The Land Trust Alliance: Conserve Your Land - What is a Conservation Easement, <http://www.lta.org/conserve/easement.htm> (January, 2008).

⁴ Florida Statute 704.06, Title XL, Chapter 704.

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 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.⁵

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 code outlines three basic tests for qualification. It must be:

- 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 conservation purposes are provision for 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 aside in order to increase building density levels, and lands that are planned for or

⁵Wikipedia Encyclopedia – Conservation Easements, <http://wikipedia.org/wiki/Conservation-Easement> (January 2008).

used for golf courses, soccer fields, softball fields, or other types of intensively managed recreational uses.⁶

III. Effect of Proposed Changes:

This proposed amendment requires the Legislature to provide by law for an ad valorem tax exemption for real property used for conservation purposes. The Legislature must define “conservation purposes” by law.

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:

If the exemption authorized by the measure lowers the value of real property below its market or just value, the amendment may reduce ad valorem tax revenues to counties, municipalities, special districts, and school districts.

B. Private Sector Impact:

If the exemption authorized by the measure reduces the taxable value of some properties, counties, municipalities, special districts, and school districts may increase ad valorem tax millage rates on non-exempt properties to make up the revenue shortfall.

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

⁶ Georgia Land Conservation Program,
http://glcp.georgia.gov/00/channel_modifieddate/0,2096,82613131_96091185,00.html.

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:

Constitutional Proposal 15 uses the phrase “by general law” two times in the same sentence. As a result, the meaning of the sentence may be unclear. The Commission may wish to revise the measure as follows:

(f) Real property used for conservation purposes shall be exempt from ad valorem taxation. The legislature shall define “conservation purposes” by law.