

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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SJR 1206

INTRODUCER: Senator Bennett

SUBJECT: Property Tax Exemption/Renewable Energy Source Device

DATE: March 17, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McGuire/Wiehle	Caldwell	CU	Favorable
2.	Gizzi	Yeatman	CA	Favorable
3.			FT	
4.			WPSC	
5.			RC	
6.				

I. Summary:

This joint resolution proposes an amendment to article VII, sections 3 and 4 of the Florida Constitution, which if approved by voters at the next general election, would give the Legislature authority to grant an ad valorem tax exemption for a renewable energy source device and for real property on which the device is installed and operated. The value and duration of the exemption shall be fixed by general law, not to exceed the original cost of the device or a term of ten years.

The joint resolution also creates a new section in article XII of the Florida Constitution proposing a schedule of effective dates for these constitutional amendments.

This joint resolution must be approved by a three-fifths vote of each house of the Legislature.

This joint resolution amends article VII, sections 3 and 4 of the Florida Constitution and creates a new section under article XII of the Florida Constitution.

II. Present Situation:

Just Valuation

Article VII, section 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 Under Florida law, just

¹ Article VII, s. 4, Fla. Constitution

valuation is synonymous with fair market value.² Section 193.011, F.S. requires property appraisers to consider the following eight factors in determining the property's just valuation:

- (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.

Renewable Energy Incentives

In 1980, a property tax exemption relating to the installation of renewable energy source devices was implemented into article VII, section 3(d) of the Florida Constitution. The exemption provided:

By general law and subject to conditions specified therein, there may be

² 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).

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, for the period of time fixed by general law not to exceed ten years.³

The Legislature enacted s. 196.175, F.S., that same year to implement the constitutional amendment providing a property tax exemption for real property on which a renewable energy source device is installed and is being operated.⁴ The legislation limited the exemption to the lesser of:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

However, the statute expired after a period of 10 years and the exemption was not available for renewable energy source devices installed before January 1, 1980, or after December 31, 1990. In December 2000, the last of the property tax exemptions under this statute expired,⁵ rendering the statute inoperative and article VII, section 3(d) of the Florida Constitution unimplemented.

During the 2008 Legislative Session, the Legislature and the Taxation and Budget Reform Commission (TBRC) took conflicting actions.

The Legislature enacted ch. 2008-227, L.O.F., (HB 1735) to remove the expiration date of the property tax exemption for renewable energy source devices, and thereby allowed property owners with such devices to reapply for the exemption effective January 1, 2009. However, s. 196.175, (4), F.S., still limited the exemption to a period of ten years. The bill also revised the options for calculating the amount of the exemption to the amount of the original cost of the device, including the installation cost, but excluding the cost of replacing previously existing property removed or improved in the course of such installation.⁶

In November 2008, Florida voters also approved a constitutional amendment proposed by the Florida Tax and Budget Reform Commission (TBRC) which repealed the Legislature's authority to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such a device is installed and operated. The amendment also added the following language to section 4, Article VII, of the State Constitution:

³ Article VII, s. 3, Fla. Constitution.

⁴ Section 196.175, F.S.

⁵ Comm. on Finance and Tax, Fla. Senate, *Assessment of Renewable Energy Devices and Improvements that Increase Resistance to Wind Damage: Implementation of Constitutional Amendment Approved in November 2008*, 1 (Interim Project Report 2010-116) (Oct. 2009).

⁶ Section 196.175, F.S. (2008).

(i) The legislature, by general law and subject to conditions specified therein, may prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- 1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
- 2) The installation of a renewable energy source device.⁷

During the 2009 Regular Session, bills were introduced in the Senate and House of Representatives to implement changes made to the constitution with the passage of TBRC's proposed amendment; however, neither pieces of legislation passed. Thus, there is currently a statute in effect without the necessary constitutional provision authorizing it, and there have been no statutes enacted specifically to implement the new provisions passed by voters in 2008.

Proposed legislation has currently been filed for the 2010 regular session to implement the new provisions of the constitution which exempt both the installation of renewable energy source devices and improvements to increase a property's resistance to wind damage from the assessed value of real property.⁸ There is also proposed legislation to implement the constitutional amendment repealing the Legislature's authority to grant a property tax exemption pursuant to s. 196.175, F.S.⁹

III. Effect of Proposed Changes:

This joint resolution essentially restores to article VII, s. 3 of the State Constitution, the previous constitutional authority of the Legislature to grant an ad valorem property tax exemption to a renewable energy device and to the property on which it is installed and operated. The resolution also deletes the provision in article VII, s. 4 of the State Constitution, on renewable energy devices and their exclusion in the assessed value of real property, leaving in the provision which authorizes the Legislature to exclude from the assessed value of real property improvements or changes made to increase the property's resistance to wind damage.

The proposed changes to the Constitution would expand application of the exemptions for installation and operation of renewable energy sources devices to properties other than those used for residential purposes.

The proposed changes to article VII, s. 3 of the State Constitution, will take effect January 1, 2011. Proposed changes to article VII, s. 4 of the State Constitution, will take effect upon voter approval at the next general election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ Article VII, s. 4(i), Fla. Const. (2008).

⁸ HB 151; SB 1164; SB 1380 and SB 1410 (2010 Reg. Session).

⁹ HB 7005 and SB 1410 (2010 Reg. Session).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before electors at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for the specific purpose.

Article XI, section (5)(e) of the State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, changes to article VII, section 3 (replacement of authorization for exemption) will take effect January 1, 2011, and changes to article VII, section 4 (repeal of provision on assessed value) will take effect upon approval by voters.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This joint resolution, if approved by voters at the next general election, will provide an ad valorem tax exemption for renewable energy source devices and the real property on which the devices are installed and operated. This will have an indeterminate effect on the assessed value of property and therefore, on property tax collected by local governments.

If this joint resolution is passed by the Legislature and approved by Florida voters, it would grant the Legislature authorization to provide a property tax incentive for renewable energy source devices. However, there are differences between this joint resolution and the current constitutional provision which could warrant different fiscal impacts. The current authorization allows the Legislature to prohibit the consideration of the installation of a renewable energy source device in the determination of the assessed value of real property used for residential purposes. This joint resolution would authorize the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to the real property on which the device is installed and operated regardless of whether the property is used for residential purposes, with the value of the exemption to be fixed by general law not to exceed the original cost of the device and the duration of the exemption not to exceed ten years. The economic impact of this joint resolution cannot be determined until the additional details in the approved implementing statute are established.

B. Private Sector Impact:

The fiscal impact on property taxes is indeterminate at this time. However, based on implementing legislation, there may be a potential for greater benefits to consumers by expanding the exemption for non-residential property and allowing the exemption to apply to the renewable energy source device, as compared to the current provision which only prohibits the value of the device from being considered in the assessed value of residential real property.

C. Government Sector Impact:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$94.68 for this fiscal year. The department estimates that the full advertisement costs for this amendment would be \$227,610.72.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The proposed changes in this joint resolution may provide the Legislature with greater flexibility to implement legislation for these exemptions; as the language grants the Legislature the authority to determine the actual benefit amount granted under this exemption amount and the ability to change this amount during certain circumstances. For example, in fiscal years with declining revenues, the implementing statute can be amended to adjust the benefit of the exemption as needed.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.