

**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: SB 1410  
 INTRODUCER: Finance and Tax  
 SUBJECT: Assessment of Residential Property  
 DATE: February 12, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	FT	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill implements section 4(i), Article VII, of the State Constitution, which prohibits a property appraiser from considering the installation and operation of a “renewable energy source device” in determining the assessed value of residential property. The bill also implements the constitutional amendment repealing the Legislature’s constitutional authority to grant an ad valorem tax exemption for such devices and to real property on which such a device is installed and operated. The bill provides a definition for “renewable energy source device” under ch. 193, F.S., and specifies that the bill applies to both new and existing construction.

This bill substantially amends ss. 197.012, 196.121, and 196.1995, of the Florida Statutes and repeals s. 196.175, F.S.

This bill creates s. 193.624, of the Florida Statutes.

**II. Present Situation:**

**Background**

In 1980, the following language was implemented in section 3(d), Article VII, of the State Constitution:

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.<sup>1</sup>

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. 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.

As provided in the constitutional amendment, the legislation provided that the exemption shall not exceed a period of ten years. Specifically, the exemption period applied from January 1, 1980, to December 31, 1990, with the last exemptions expiring in December 2000.

During the 2008 Legislative Session, ch. 2008-227, L.O.F., (HB 1735) was enacted to remove the expiration date of the property tax exemption for renewable energy source devices, 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.<sup>2</sup>

In November 2008, Florida voters approved a constitutional amendment proposed by the Florida Tax and Budget Reform Commission (TBRC).<sup>3</sup> The amendment added the following language to section 4, Article VII, of the State Constitution:

- (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.<sup>4</sup>

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<sup>1</sup> FLA. CONST. art. VII, s.3(c) (1980).

<sup>2</sup> Section 196.175, F.S. (2008).

<sup>3</sup> The Florida Tax and Budget Reform Commission (TBRC) was created in 1988 when voters approved an amendment to the State Constitution to transfer the authority to review state and local taxation and budget issues from the Constitution Revision Commission to the TBRC. The TBRC is established every ten years with 11 members appointed by the Governor, none of whom may be a legislator at the time of appointment. The Commission is composed of seven members appointed by the Speaker of the House of Representatives, seven members appointed by the President of the Senate, and four non-voting, ex officio members all of whom must be state legislators at the time of appointment and must meet additional requirements. The 2007-2008 TBRC adopted the working waterfronts proposal as a CS for CP's 6, 8, & 34, Second Engrossed, and the proposal was Revision 6 on the ballot of the 2008 General Election.

<sup>4</sup> FLA. CONST. art. VII, s.4(i) (2008).

The amendment also repealed the Legislature's then-existing constitutional 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.

### **Property Tax Appraisal**

Unless expressly preempted, section 4, Art. VII, of the State Constitution requires all property to be assessed at just valuation for the purposes of ad valorem taxation. Under Florida law, just valuation is synonymous with fair market value.<sup>5</sup> Section 193.011, F.S. requires property appraisers to consider the following 8 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.

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<sup>5</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).

### III. Effect of Proposed Changes:

The bill creates section 193.624, F.S., to prohibit the property appraiser from considering the installation and operation of a “renewable energy source device” in determining the assessed value of residential property on both new and existing construction. The bill defines “renewable energy source device” to include any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill repeals the existing definition of renewable energy source device under s. 196.102(14), F.S., and repeals the ad valorem tax exemption in s. 196.175, F.S., pursuant to the constitutional amendment’s removal of the Legislature’s authority to provide such exemption. The bill also amends several cross-references in ss. 196.121 and 196.1995, F.S.

The bill provides an effective date of July 1, 2010, applicable to assessments beginning January 1, 2011.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

This proposed bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate. Since the enactment of a bill to implement this constitutional amendment is at the discretion of the Legislature, the mandates provision under section 18(b), Article VII, of the State Constitution would apply if the bill is determined to significantly reduce local revenue-raising authority. In that case, the bill would have to be approved by a two-thirds vote of the membership of each house.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not determined the fiscal impact of this bill. However, the recurring impact of ch. 2008-227, L.O.F., in 2008 was estimated to be \$3.8 million beginning in FY 2010-11.

**B. Private Sector Impact:**

This bill may encourage residential property owners and builders to add renewable energy source devices as such devices will not increase the assessed value of the property. The repeal of the existing exemption for renewable energy devices may discourage non-residential property owners from installing such devices.

**C. Government Sector Impact:**

The impact of this bill on local governments is indeterminate, since the potential revenue losses from non-consideration of renewable energy devices for residential property will be offset to some extent by the repeal of the exemption of such devices under s. 196.175, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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