

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 Finance and Tax Committee

BILL: SB 1410

INTRODUCER: Finance and Tax

SUBJECT: Assessment of Residential Property

DATE: April 9, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Fournier	McKee	FT	Favorable
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.

The Revenue Estimating Conference has determined that this bill will reduce local revenue by \$2.9 million in FY 2011-12, with a recurring reduction of \$19.1 million, at current millage rates.

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:

Assessment of Property for Tax Purposes

Article VII, section 4 of the Florida Constitution requires that regulations must be prescribed by general law to secure a just valuation of all property for ad valorem taxation.¹ Under Florida law,

¹ Article VII, s. 4, Fla. Constitution

just 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.

Article VII, section 4, further provides for many types of property to be assessed on a basis other than just value. Agricultural land, land producing high water recharge, land used exclusively for noncommercial recreational purposes, and land used for conservation purposes may be classified by general law and assessed solely on the basis of character or use, and the assessment of certain working waterfront properties is based upon the current use of the property. Tangible personal property held for sale as stock in trade and livestock may be assessed at a fraction of its value, may

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).

be classified for tax purposes, or may be exempted from taxation. The assessed value of homestead property may not increase over the prior year's assessment more than 3 percent or the percentage change in the Consumer Price Index, and for non-school tax purposes, the assessment of residential real property and non-residential real property may not increase more than 10 percent over the prior year.

Property Tax Exemptions

Article VII, section 3 of the State Constitution provides for property tax exemptions. Some property is exempted by the constitution –property owned by a municipality and used exclusively by it for municipal or public purposes, household goods and personal effects valued up to \$1000, property of every widow or widower or person who is blind value up to \$500, \$25,000 of the assessed value of tangible personal property, and property dedicated in perpetuity for conservation purposes—while other exemption may be enacted by the Legislature or by local governments.³ Article VII, section 6 provides exemptions for homestead 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 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.⁴

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.⁵ 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,⁶ rendering the statute inoperative and article VII, section 3(d) of the Florida Constitution unimplemented.

³ Article VII, S. 4, Fla. Constitution.

⁴ Article VII, s. 3, Fla. Constitution.

⁵ Section 196.175, F.S.

⁶ 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).

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

On April 30, 2008, the Legislature enacted ch. 2008-227, L.O.F., (HB 7135) 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.⁷

In November 2008, Florida voters also approved a constitutional amendment placed on the ballot on April 24, 2008 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:

- (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.⁸

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.

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.

⁷ Section 196.175, F.S. (2008).

⁸ Article VII, s. 4(i), Fla. Const. (2008).

- 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:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this bill does not qualify for one of the exemptions provided in s. 18, Art. VII, State Constitution, and reduces the authority municipalities or counties have to raise revenues in the aggregate, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and may require a two-thirds vote of the membership of each house of the Legislature. Therefore, in an abundance of caution, the Legislature should consider passing this bill by a two-thirds vote.

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 determined that this bill will reduce local revenue by \$2.9 million in FY 2011-12, with a recurring reduction of \$19.1 million, at current millage rates.

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.

C. Government Sector Impact:

The impact of this bill on local government revenue is (\$2.9 million) in FY 2011-12, with a recurring impact of (\$19.1 million), at current millage rates.

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.