

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 434

INTRODUCER: Senator Latvala

SUBJECT: Assessment of Residential Real Property

DATE: January 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission. This amendment added the following language to article VII, section 4 of the Florida Constitution:

- (i) The legislature, by general law and subject to conditions specified therein, may prohibit the 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.¹

The amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on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.

This bill implements the 2008 Constitutional Amendment. Specifically, the bill defines “changes or improvements made for the purpose of improving a property’s resistance to wind damage” and “renewable energy source devices”. The bill provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of changes or improvements made for the purpose of improving a property’s resistance to wind damage or the installation and operation of a renewable energy source device. The bill

¹ FLA. CONST. art. VII, s. 4

specifies that these provisions apply to both new and existing construction used for residential purposes.

This bill may require a two-thirds vote of the membership of each house of the Legislature for passage.

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1554, 196.012, 196.121, and 196.1995.

This bill creates section 193.624 of the Florida Statutes.

This bill repeals section 196.175 of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.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;

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).

- (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 of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.³ The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

Article VII, sections 3 and 6 of the Florida Constitution permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

Review of Late-Filed Property Exemption Applications

Section 196.011(1), F.S., requires every person or organization with legal title to real or personal property entitled to an exemption from taxation, to file an application for the exemption with the county property appraiser on or before March 1 of each year.⁵ Any applicant who is qualified to receive a property tax exemption and who fails to file an application by March 1, must file an application with the county property appraiser no later than 25 days after the property appraiser mails the Truth in Millage (TRIM) notice. The applicant must show that she or he was unable to timely apply for the exemption due to extenuating circumstances, at which point the property appraiser has the discretion to grant the exemption.⁶

If the applicant is unable to show extenuating circumstances for his or her untimely application, as judged by the property appraiser, s. 196.011(8), F.S., allows the applicant to file a petition with the value adjustment board (VAB), requesting that the exemption be granted. The petition must be

³ Section 196.185, F.S.

⁴ See FLA. CONST. art. VII, s. 4(d) & (g) (stating that 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 levies 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.).

⁵ Section 196.011(1), F.S.

⁶ Section 196.011(8), F.S.

filed no later than 25 days after the property appraiser mails the Truth in Millage (TRIM) notice, and the applicant must pay a nonrefundable \$15 fee upon filing the petition. If the VAB determines that the person is qualified to receive the exemption and demonstrates extenuating circumstances to warrant granting the petition, then the VAB may grant the property tax exemption for the current year.⁷

Renewable Energy Incentives

In 1980, the following property tax exemption relating to the installation of renewable energy source devices was added into article VII, section 3(d) of the Florida 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, for the period of time fixed by general law not to exceed ten years.⁸

During that same year, the Legislature enacted s. 196.175, F.S., 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.⁹ 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 granting the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute applied to renewable energy source devices installed between January 1, 1980 and December 31, 1990. In December 2000, the last of the property tax exemptions under this statute expired,¹⁰ 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.

A.) 2008 Legislative Action

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,

⁷ *Id.*

⁸ FLA. CONST. art. VII, s. 3.

⁹ Section 196.175, F.S.

¹⁰ 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).

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.¹¹

B.) 2008 Constitutional Amendment 3

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot on April 24, 2008, by the Florida Tax and Budget Reform Commission (TBRC):

- (i) The legislature, by general law and subject to conditions specified therein, may prohibit the 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.¹²

The amendment was permissive and therefore did not require the Legislature to enact implementing legislation. The 2008 amendment also repealed then-existing constitutional authority for the Legislature 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. Although the constitutional provisions granting the ad valorem tax exemptions were repealed in 2008, the implementing language is still part of the Florida Statutes.¹³

During the 2009 and 2010 Regular Sessions, bills were introduced in both the Florida Senate and House of Representatives to implement changes made to the constitution; however, no legislation was passed.¹⁴ Currently, there are no statutory provisions in place to implement the constitutional provisions passed by the voters in 2008.

Wind Resistance Incentives

Florida Statutes currently do not provide property tax incentives for changes or improvements that seek to improve a structure's ability to withstand wind damage, as permitted by the 2008 Constitutional Amendment.¹⁵ Legislation was filed during the 2009 and 2010 Regular Sessions to implement the changes made to the constitution in 2008 with respect to changes and improvements to improve a property's resistance to wind damage; however no legislation was passed.¹⁶

¹¹ Section 196.175, F.S.

¹² FLA. CONST. art. VII, s. 4.

¹³ In 2010, the Florida House of Representatives filed HB 7005 repealing the obsolete language in ss. 196.175 and 196.12(14), F.S. This legislation passed the House on March 10, 2010, but died in messages.

¹⁴ During the 2009 Regular Session, SB 2454 and HB 7113 were filed. During 2010, the following legislation was filed: SB 1164, HB 151, SB 1410, and SPB 7020.

¹⁵ FLA. CONST. art. VII, s. 4(i)(1).

¹⁶ During the 2009 Regular Session, SB 2454 and HB 7113 were filed. During 2010, the following legislation was filed: SB 1164, HB 151, SB 1380, and SPB 7022.

Hurricane Mitigation Discounts and Premium Credits

Section 627.0629(1), F.S., requires insurers to provide premium credits or discounts “to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses”. To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs, in cooperation with the Department of Insurance, contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, titled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study’s mathematical results, termed “wind loss relativities,” were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.¹⁷

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.¹⁸ In 2006, the Legislature amended s. 627.0629(1)(a), F.S., to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.¹⁹ Thereafter, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.²⁰ In 2008, the OIR obtained a new study evaluating the appropriate mitigation discount amounts; however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Policyholders are typically responsible for substantiating the existence of loss mitigation features that qualify for a mitigation discount to their insurers. In 2007, the Financial Services Commission adopted a uniform mitigation verification form to be used by all insurers to corroborate a property’s mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The mitigation verification form must be signed by one of the following:

- a hurricane mitigation inspector certified by the My Safe Florida Home Program;
- a building code inspector;
- a general, building, or residential contractor;
- a professional engineer meeting specified criteria;

¹⁷ The relativities applied only to the portion of a policy’s wind premium associated with the dwelling, its contents, and loss of use.

¹⁸ In an Informational Memorandum, issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

¹⁹ Section 14, Chapter 2006-12, L.O.F.

²⁰ The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.

- a professional architect; or
- any other individual or entity acceptable to the insurance company.

A form that is certified by the Department of Financial Services must also be accepted by the insurer.

2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.²¹ The report reviewed proposed legislation that was filed during the 2009 Regular Session to implement the constitutional amendment and discussed property tax incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.²²

According to the interim report, the following states have enacted property tax incentives for renewable energy equipment:²³

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;
- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or the addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;
- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20-year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;

²¹ Comm. on Finance and Tax, The Florida Senate, *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, (Interim Report 2010-116) (Oct. 2009).

²² *Id.* citing *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

²³ This list does not include incentives for public utilities.

- New York provides a 15-year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system. Buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;
- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;
- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;
- Virginia allows a local option exemption or partial exemption for solar energy equipment; and
- Wisconsin exempts solar and wind energy systems.²⁴

Although the interim report noted that tax incentives for improvements relating to disaster preparedness are less common, the report articulated that the following states have enacted property tax incentives for improvements dealing with disaster preparedness:

- California does not consider the construction or installation of seismic retrofitting improvements or earthquake hazard mitigation technology in existing buildings as new construction, contingent upon the property owner filing required documents;
 - California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;
- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and
- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.²⁵

III. Effect of Proposed Changes:

Section 1 creates s. 193.624, F.S., to provide that, when determining the assessed value of real property used for residential purposes for both new and existing construction, the property appraiser may not consider the just value of the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which may include any of the following:
 - Improving the strength of the roof-deck attachment;
 - Creating a secondary water barrier to prevent water intrusion;
 - Installing wind-resistant shingles;

²⁴ Comm. on Finance and Tax, *supra* note 21, at 4.

²⁵ *Id.*

- Installing gable-end bracing;
 - Reinforcing roof-to-wall connections;
 - Installing storm shutters; or
 - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment that 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; or
 - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill provides that a parcel of residential property may not be assessed pursuant to this section unless an application is filed on or before March 1 of the first year the property owner claims the assessment reduction for renewable energy sources devices or changes or improvements made for the purpose of improving the property's resistance to wind damage.

The bill allows the property appraiser to require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Consistent with current law, this bill provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the TRIM notice. If the property appraiser denies the exemption, the applicant may file a petition with the VAB, pursuant to s. 194.011(3), F.S. Upon filing the petition, the applicant must pay a non-refundable fee of \$15.00. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the VAB to warrant granting assessment under this section, the property appraiser shall calculate the assessment in accordance with the new section created by this bill (s. 193.624, F.S.).

Section 2 amends cross-references in s. 193.155, F.S., relating to homestead assessments to incorporate changes made within the bill.

Section 3 amends cross-references in s. 193.1554, F.S., relating to the assessment of non-homestead residential property to incorporate changes made within the bill.

Section 4 amends s. 196.012, F.S., to delete the existing definition for renewable energy source devices provided in subsection (14).

Section 5 amends cross-references in s. 196.121, F.S., relating to homestead exemption forms, to incorporate changes made within the bill.

Section 6 amends cross-references in s. 196.1995, relating to economic development ad valorem tax exemptions, to incorporate changes made within the bill.

Section 7 repeals the obsolete provisions in s. 196.175, F.S., which implemented the constitutional tax exemption for renewable energy source devices that was removed from the Florida Constitution by the voters in 2008.

Section 8 provides that this act shall take effect on July 1, 2011, and shall apply to assessments beginning January 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Article VII, of the State Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate, to be passed by a two-thirds vote of the membership of each house of the Legislature. By reducing the tax base upon which counties and municipalities raise ad valorem revenue, this bill reduces their revenue-raising authority.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may provide incentives for residential property owners and home builders to add renewable energy source devices to their property or make changes and improvements to increase the property's wind resistance, since such devices and improvements will not increase the assessed value of the property.

C. Government Sector Impact:

At this time, the Revenue Estimating Conference has not determined the fiscal impact of this bill. However, the Revenue Estimating Conference determined that similar legislation filed during the 2010 Regular Session (SB 1410) *relating to renewable energy source devices* would reduce local revenue by \$2.9 million in FY 2011-12, with a recurring reduction of \$19.1 million, at current millage rates. Furthermore, in similar legislation filed during the 2010 Regular Session (SB1380) *relating to changes or improvements made to improve the property's resistance to wind damage*, the Revenue Estimating Conference estimated a decrease in local revenue by \$0.3 million in FY 2011-12, and on a recurring basis by \$1.9 million, at current millage rates.²⁶

Property appraisers may incur additional costs relating to implementing the provisions of this bill.

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.

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

²⁶ Senate Committee on Finance and Tax, *Senate Bill 1410 Committee Analysis* (April 9, 2010). See also Senate Committee on Finance and Tax, *Senate Bill 1380 Committee Analysis* (April 9, 2010) (both on file with the Senate Committee on Community Affairs).