

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 133 Assessment of Residential and Nonhomestead Real Property

SPONSOR(S): Energy & Utilities Subcommittee, Frishe and others

TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 156 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Gibson	Hoagland
3) Finance & Tax Committee	16 Y, 0 N	Aldridge	Langston
4) State Affairs Committee	17 Y, 0 N	Whittier	Hamby

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment relating to property taxes authorizing the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

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

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 device." It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the increase in the just value attributed to changes or improvements made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device. The bill specifies that the provision applies to new and existing property. Specifically, the provision applies to changes or improvements made to properties on or after January 1, 2012.

The Revenue Estimating Conference (REC) has estimated that this bill will have no impact on state revenues. The REC estimated, **assuming current millage rates**, that the bill will have a negative impact on school tax revenues of \$5.1 million in FY 2013-14, \$10.4 million in FY 2014-15, \$16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of \$24.1 million. The estimated statewide negative impact on local government non-school tax revenue is \$7.1 million in FY 2013-14, \$14.4 million in FY 2014-15, \$23.1 million in FY 2015-16 with a negative \$33.6 million recurring.

The bill takes effect on July 1, 2012, and applies to assessments beginning January 1, 2013.

The bill may implicate the mandate provisions of Article VII, section 18 of the Florida Constitution, requiring a two-thirds vote of the membership of each house to become law. (See Comments section).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), 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, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device¹ is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- 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.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

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

(i) The legislature, by general law and subject to conditions specified therein, may² 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 Sections 196.175 and 196.012(14), F.S.

² The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

The amendment also repealed the 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 device is installed and operated. This repealed language had provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages. On April 29, 2011, the House, again, passed the measure, but the bill was not heard in the Senate.

Property Valuation

Article VII, section 4, of the Florida Constitution, provides that all property, with some exceptions, is to be assessed at “just value.” Florida courts define “just value” as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

“Assessed value of property”³ means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the “Save Our Homes” assessment limitation⁴ and the 10 percent cap on non-homestead property.⁵ In addition, “assessed value” is also the classified use value of agricultural or other special classes of property that are valued based on their current “classified” use rather than on market value.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when determining 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;

³ Section 192.001(2), F.S.

⁴ The “Save Our Homes” amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. See Art. VII, s. 4(d)(1), Fla. Const.

⁵ On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

- (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.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.⁶

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

Effect of Proposed Changes

The bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing property, the property appraiser may not consider the increase in the just value of the property attributable to the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which 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.
 - Installing gable-end bracing.
 - Reinforcing roof-to-wall connections.
 - Installing storm shutters.
 - Installing opening protections.
- The installation and operation of a renewable energy source device, which means 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.

⁶ The former 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, entitled *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. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

- 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 provides that when residential real property is being assessed, any increase in the just value of the property attributable to changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device, may not be considered if an application is filed with the property appraiser on or before March 1 of the first year the property owner requests the assessment. The provision applies to changes or improvements to properties made on or after January 1, 2012, and applies to assessments beginning January 1, 2013.

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

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

The bill deletes the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1: Creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

Section 2: Amends s. 193.155, F.S., relating to homestead assessments.

Section 3: Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 4: Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 5: Amends s. 196.121, F.S., amending a cross-reference.

Section 6: Amends s. 196.1995, F.S., amending cross-references.

Section 7: Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8: Provides an effective date of July 1, 2012, and applies to assessments beginning on January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimated, **assuming current millage rates**, that the bill will have a negative impact on school tax revenues of \$5.1 million in FY 2013-14, \$10.4 million in FY 2014-15, \$16.5 million in FY 2015-16 and a recurring negative impact on school tax revenues of \$24.1 million. The estimated statewide negative impact on local government non-school tax revenue is \$7.1 million in FY 2013-14, \$14.4 million in FY 2014-15, \$23.1 million in FY 2015-16 with a negative \$33.6 million recurring.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the bill may result in lower property tax expenses and lower insurance rates and energy costs for taxpayers who make qualifying improvements to residential real property on or after January 1, 2012.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Energy & Utilities Subcommittee heard and passed PCS for HB 133 as a Committee Substitute. Mainly, the Committee Substitute makes the following changes to the original bill:

- Deletes proposed direction to the Department of Revenue to review every change made to the assessed or taxable value of a parcel on the assessment roll that was the result of an informal conference;
- Deletes proposed definitions of “placed on the tax roll” for purposes of assessment of residential, nonhomestead residential, and nonresidential real properties;
- Deletes proposed subsection referring to properties that are combined or divided for purposes of assessments;
- Amends assessment calculations for purposes of the intent of the bill; and
- Specifies that the provision only apply to installations, changes or improvements to properties made on or after January 1, 2012.

This analysis addresses the current Committee Substitute.