

**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 Appropriations Subcommittee on Finance and Tax

BILL: SB 1064

INTRODUCER: Senator Latvala

SUBJECT: Assessment of Residential and Nonhomestead Real Property

DATE: April 11, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Favorable</b>
2.	Fournier	Diez-Arguelles	AFT	<b>Pre-meeting</b>
3.			AP	
4.				
5.				
6.				

**I. Summary:**

SB 1064 implements a constitutional amendment approved by voters in the November 2008 General Election. 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.<sup>1</sup>

The constitutional amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on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 is estimated to reduce property tax revenue by \$27.7 million in Fiscal Year 2014-2015 and by \$115.2 million on a recurring basis.

SB 1064 defines "changes or improvements made for the purpose of improving a property's resistance to wind damage" and "renewable energy source devices." When 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

<sup>1</sup> FLA. CONST. art. VII, s. 4.

property's resistance to wind damage or the installation and operation of a renewable energy source device. The bill specifies that these provisions apply to changes or improvements made on or after January 1, 2013, to new and existing residential real property and that the property owner must apply for assessment under these provisions.

This bill creates s. 193.624, F.S., and repeals s. 196.175, F.S.

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1551, 193.1554, 196.012, 196.121, 196.1995.

## II. Present Situation:

### Property Tax Assessments

Article VII, s. 4, 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.<sup>2</sup> Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.<sup>3</sup>

Exceptions to the just valuation requirement exist for agricultural land, land producing high water recharge to Florida's aquifers, land used exclusively for noncommercial recreational purposes, and land used for conservation purposes. Each of these property categories may be assessed solely on the basis of their character or use.<sup>4</sup> Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.<sup>5</sup> Certain working waterfront properties are assessed on the basis of the current use of the property.<sup>6</sup> The State Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.<sup>7</sup>

Article VII, sections 3 and 6, Florida Constitution, permit a number of ad valorem tax exemptions. These include exemptions for homesteads and for 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 property's taxable value.

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<sup>2</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).

<sup>3</sup> See s. 193.011(5), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 4.

<sup>5</sup> Section 196.185, F.S.

<sup>6</sup> FLA. CONST. art. VII, s. 4.

<sup>7</sup> See FLA. CONST. art. VII, s. 4(d) and (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).

## Review of Late-Filed Property Exemption Applications

Section 196.011(1), F.S., requires every person or organization 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.<sup>8</sup> 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 apply timely for the exemption due to extenuating circumstances, at which point the property appraiser has the discretion to grant the exemption.<sup>9</sup>

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 filed no later than 25 days after the property appraiser mails the Truth in Millage 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.<sup>10</sup>

## Early Efforts at Renewable Energy Source Incentives

Property tax incentives for renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to art. VII, s. 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, for the period of time fixed by general law not to exceed ten years.<sup>11</sup>

During that same year, the Legislature enacted s. 196.175, F.S., to implement the constitutional amendment.<sup>12</sup> The legislation limited the ad valorem 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.

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<sup>8</sup> Section 196.011(1), F.S.

<sup>9</sup> Section 196.011(8), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> FLA. CONST. art. VII, s. 3.

<sup>12</sup> Section 196.175, F.S.

The statute granting the exemption mirrored the 10-year time limit in the constitution. Specifically, the exemption period authorized was from January 1, 1980, through December 31, 1990. Therefore, no exemptions were granted after December 31, 1990, and exemptions granted in December 1990 expired 10 years later in December 2000. At this point, the statute was rendered inoperative and art. VII, s. 3(d), Florida Constitution was not implemented by general law.

### **2008: Legislative Action and Constitutional Amendment 3**

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. This allowed property owners to apply again for the exemption effective January 1, 2009, and once more bound it with a 10-year life span. The bill also revised the means for calculating the exemption limit. The exemption was no longer capped at 8 percent of assessed value. Instead, it was limited to the original cost of the renewable energy device, including the installation cost, but excluding the cost of replacing previously existing property.<sup>13</sup>

In November 2008, Florida voters approved the following constitutional amendment placed on the ballot 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.<sup>14</sup>

The amendment was permissive; unless the Legislature enacted implementing legislation it had no effect. 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 in s. 196.175, F.S., is still part of the Florida Statutes.<sup>15</sup>

Florida Statutes currently do not provide property tax incentives for changes or improvements for wind damage resistance or for installation of a renewable energy source device. Bills were filed during the 2009, 2010, 2011 and 2012 legislative sessions to implement the changes made to the constitution in 2008; however, no legislation was passed.<sup>16</sup>

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<sup>13</sup> Section 196.175, F.S.

<sup>14</sup> FLA. CONST. art. VII, s. 4.

<sup>15</sup> In 2010, HB 7005 was filed, 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.

<sup>16</sup> During the 2009 legislative session, SB 2454 and HB 7113 were filed; in 2010, SB 1164, HB 151, SB 1410, and SPB 7020; in 2011 SB 434, SB 732 and HB 531. CS/CS/HB 531 passed the House but died in messages. In 2012, CS/SB 156 and CS/HB 133 both died in committee.

## Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for policies covering residential properties built or retrofitted with construction techniques which reduce the amount of loss in a windstorm.<sup>17</sup> 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.

### 2009 Senate Interim Report

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.<sup>18</sup> The report reviewed proposed legislation that was filed during the 2009 legislative session to implement the constitutional amendment. It also discussed property tax incentives that are provided in other states for installing renewable energy equipment or improving disaster resistance.<sup>19</sup>

At the time of the interim report, 17 states had enacted property tax incentives for renewable energy equipment including devices related to solar, wind, and geothermal energy. Although the report noted that tax incentives for improvements related to disaster preparedness are less common, three states had enacted such laws.

### III. Effect of Proposed Changes:

**Section 1** creates s. 193.624, F.S., related to improvements to a property's resistance to wind damage and renewable energy source devices made or installed after January 1, 2013, to new and existing residential real property. The section provides that, when determining the assessed value of real property used for residential purposes, 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;
  - Installing gable-end bracing;
  - Reinforcing roof-to-wall connections;

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<sup>17</sup> 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.

<sup>18</sup> 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).

<sup>19</sup> *Id.* citing *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

- 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 section 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 a qualifying assessment reduction. The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser with information 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 for property tax exemptions, the section 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 assessment reduction, 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 s. 193.155, F.S., relating to homestead assessments to make cross references which incorporate changes made by the bill.

**Section 3** reenacts s. 193.1551, F.S., for the purpose of incorporating the amendment made by this bill in section 2.

**Section 4** amends s. 193.1554, F.S., relating to nonhomestead assessments to make cross references which incorporate changes made by the bill.

**Section 5** amends s. 196.012, F.S., to delete the existing definition for renewable energy source devices provided in subsection (14).

**Section 6** amends s. 193.121, F.S., relating to homestead exemption forms to make cross references which incorporate changes made by the bill.

**Section 7** amends s. 193.1995, F.S., relating to economic development ad valorem tax exemptions to make cross references which incorporate changes made by the bill.

**Section 8** repeals s. 196.175, F.S., the provisions of which are obsolete as a result of the removal of the constitutional tax exemption for renewable energy source devices in 2008.

**Section 9** provides that this act shall take effect on July 1, 2013, and shall apply to assessments beginning January 1, 2014.

#### **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. By reducing the tax base upon which counties and municipalities raise ad valorem revenue, this bill reduces their revenue-raising authority and may require a two-thirds vote of the membership of each house of the Legislature.

##### **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 reduces the taxable value of property and will reduce property tax revenue unless millage rates are increased to offset the value loss. The impacts of the wind resistance and renewable energy aspects of the bill were estimated separately.

Wind Resistance

The recurring impact on non-school local tax revenue is -\$58.3 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on non-school local tax revenue is -\$12.8 million. The recurring impact on school tax revenue is -\$44.3 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on school tax revenue is -\$9.7 million.

Renewable Energy

The recurring impact on non-school local tax revenue is -\$7.2 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on non-school local tax revenue is -\$3.0 million. The recurring impact on school tax revenue is -\$5.4 million at 2012 millage rates. There is no impact in Fiscal Year 2013-2014, but in Fiscal Year 2014-2015 the impact on school tax revenue is -\$2.2 million.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

The bill may create additional workload for property appraisers and VABs.

**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.