

**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.)

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Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

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BILL: SJR 916

INTRODUCER: Senator Brandes

SUBJECT: Ad Valorem Taxes/Renewable Energy Source Devices

DATE: February 11, 2014

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Wiehle  | Caldwell       | CU        | <b>Pre-meeting</b> |
| 2. |         |                | CA        |                    |
| 3. |         |                | JU        |                    |
| 4. |         |                | RU        |                    |

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**I. Summary:**

SJR 916 proposes a constitutional amendment to existing provisions that authorize the Legislature to prohibit property appraisers, in appraising real property for ad valorem tax purposes, from considering the value of improvements to residential real property that constitute either enhancements to the property's wind resistance or the installation of a renewable energy device. The bill preserves the application of the wind-resistance provisions solely to residential real property. It expands the application of the renewable-energy provisions to all real property, but limits application to instances when the device is installed by an end-use customer primarily to offset part or all of that end-use customer's electricity demands.

**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>1</sup> Both the constitution and the statutes require that a property appraiser consider changes, additions, or improvements to residential property in determining the property's just valuation.<sup>2</sup>

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<sup>1</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>2</sup> FLA. CONST. art. VII, s. 4. and ss. 193.011, 193.155(4), and 193.1554(6), F.S.

## **Initial Constitutional Ad Valorem Renewable Energy Source Incentive**

Property tax incentives to promote renewable energy in Florida date back over 30 years. In 1980, Florida voters added the following ad valorem tax exemption authorization to 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.<sup>3</sup>

During that same year, the Legislature enacted s. 196.175, F.S., to implement the constitutional amendment.<sup>4</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.

The statute limited the exemption to a 10-year period, and the statute itself expired after 10 years. Specifically, the statute was in effect 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 no longer implemented by general law.

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

On April 30, 2008, the Legislature removed the expiration date of the property tax exemption for renewable energy source devices.<sup>5</sup> This allowed property owners to apply again for the exemption effective January 1, 2009, again with a 10-year life span.

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>6</sup>

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<sup>3</sup> FLA. CONST. art. VII, s. 3(d).

<sup>4</sup> Section 196.175, F.S.

<sup>5</sup> House Bill 7135, Ch. 2008-227, Laws of Florida.

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

The amendment was permissive; unless the Legislature enacted implementing legislation, it had no effect. The 2008 amendment also repealed the previous 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. Thus, the first constitutional provisions granting the ad valorem tax exemptions were repealed in 2008, with the related implementing language in s. 196.175, F.S., still part of the Florida Statutes, and a new set of ad valorem tax exemptions in the constitution, but with no implementing statute.

### **2009 Senate Interim Report**

In 2009, the Senate Committee on Finance and Tax issued an interim report evaluating the 2008 Constitutional Amendment.<sup>7</sup> The report reviewed proposed legislation 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>8</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.

### **2013 Legislation**

After several attempts to implement the 2008 constitutional amendment, implementing legislation was enacted in the 2013 Regular Session.<sup>9</sup> That statute provides that in determining the assessed value of real property used for residential purposes, a property appraiser cannot consider an increase in the just value of the property attributable to the installation of a renewable energy source device.<sup>10</sup> The statute defines the term “renewable energy source device” to mean 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, such equipment does not include conventional backup systems of any type.

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<sup>7</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>8</sup> *Id.* citing *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

<sup>9</sup> HB 277, Ch. 2013-77, Laws of Florida.

<sup>10</sup> Section 193.624, F.S.

- 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 statute applied to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property, and to assessments beginning January 1, 2014.

The statutes that provide for homestead<sup>11</sup> and non-homestead residential<sup>12</sup> property assessment were amended by cross reference to include this new prohibition.

### **Non-utility Production of Electricity**

#### *Non-Utility Sales to the Public*

The Florida Supreme Court has held that the Florida Statutes mandate that any person who sells electricity to even a single person is a public utility subject to regulation by the Florida Public Service Commission (PSC).<sup>13</sup> The facts of that case were as follows. PW Ventures signed a letter of intent with Pratt and Whitney to provide electric and thermal power at Pratt's industrial complex in Palm Beach County. PW Ventures proposed to construct, own, and operate a cogeneration electric power plant on land leased from Pratt and to sell its output to Pratt under a long-term contract. Before proceeding with construction of the plant, PW Ventures sought a declaratory statement from the PSC that it would not be a public utility subject to PSC regulation. After a hearing, the PSC ruled that PW Ventures proposed transaction with Pratt fell within its regulatory jurisdiction.

The Court reviewed similar Florida regulatory statutes where the Legislature had expressly provided for exclusions from regulation based on a stated limited number of customers and found that the failure of the Legislature to create such an exclusion for electric services indicated its intent that the term "to the public" include a sale to even one person.

The Court also reviewed the statutory system of electric utility regulation<sup>14</sup> and found that the regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. The Court noted that if the proposed sale of electricity by PW Ventures was outside of PSC jurisdiction, duplication of facilities could occur in contradiction to the statutory direction to the PSC to exercise its powers to avoid uneconomic duplication of generation, transmission, and distribution facilities.<sup>15</sup> The Court stated that what PW Ventures proposed was to go into an area served by a utility and take one of its major customers, an interpretation which could allow other ventures to enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme in this

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<sup>11</sup> Section 193.155(4), F.S.

<sup>12</sup> Section 193.1554(6), F.S.

<sup>13</sup> *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (1988).

<sup>14</sup> Chapter 366, F.S.

<sup>15</sup> Section 366.04(3), Florida Statutes (1985).

state. “The effect of this practice would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced.”<sup>16</sup> Finally the Court found that the Legislature had determined that the protection of the public interest required limiting competition in the sale of electric service.

Based upon these findings, the Court upheld the PSC’s order that under the proposed arrangement PW Ventures would be a public utility subject to PSC regulation.

### *Self-Generation*

#### PW Ventures

The prohibition on non-utility sales of electricity does not prohibit a person or business from producing electricity solely to furnish its own power. In its finding that the Legislature determined that the protection of the public interest required limiting competition in the sale of electric service, the Florida Supreme Court expressly noted that this determination of public interest did not require a prohibition against self-generation.<sup>17</sup>

#### Cogeneration and Small Power Producers

The statutes expressly provide for self-generation, and for the sale of any excess electricity to a public utility. A public utility is required to purchase electricity from a cogenerator<sup>18</sup> or small power producer<sup>19</sup> located in that public utility’s service territory.<sup>20</sup> The PSC is required to establish guidelines relating to the purchase of power or energy and may set rates at which a public utility must purchase the power or energy.<sup>21</sup> In fixing rates, the PSC must authorize a rate equal to the purchasing utility’s full avoided costs, defined as the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source.<sup>22</sup>

#### Standard Purchase Contract

Each public utility and each municipal electric utility or rural electric cooperative that meets specified criteria<sup>23</sup> must continuously offer a purchase contract to producers of renewable

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<sup>16</sup> *PW Ventures*, page 283.

<sup>17</sup> *Id.*, page 284.

<sup>18</sup> Cogeneration is the sequential production of thermal energy and electrical or mechanical energy from the same fuel source. *Florida’s Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 30.

<sup>19</sup> A small-power producer generates electricity from facilities using biomass, solid waste, geothermal energy or renewable resources (including wind, solar, and small hydroelectric) as their primary energy sources. *Florida’s Electric Utilities: A Reference Guide*, Revised 1994 Edition, Florida Electric Power Coordinating Group, Inc., Tampa, Florida, page 188.

<sup>20</sup> Section 366.051, F.S. This was mandated by the federal Public Utility Regulatory Policies Act of 1978, which required that electric utilities purchase the energy produced from qualifying facilities (cogenerators and small power producers) at the utility’s avoided cost of generation.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> This includes the Orlando Utilities Commission and JEA (formerly Jacksonville Electric Authority).

energy<sup>24, 25</sup> The contracts must contain payment provisions for energy and capacity (if appropriate) which are based upon the utility's full avoided costs. Each contract must be for a term of at least 10 years.

### Net Metering

Each public utility must develop a standardized interconnection agreement and net metering<sup>26</sup> program for customer-owned renewable generation<sup>27, 28</sup>. The PSC must establish requirements relating to the expedited interconnection and net metering of customer-owned renewable generation by public utilities and was authorized to adopt rules for this purpose. Additionally, each municipal electric utility and rural electric cooperative that sells electricity at retail is encouraged to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation.<sup>29</sup> In any purchase contract, the contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.

### PSC Net Metering Rule

Pursuant to the requirements of the net metering statute, the PSC adopted a rule requiring each investor-owned utility<sup>30</sup> to develop a Standard Interconnection Agreement for expedited interconnection of customer-owned renewable generation<sup>31</sup> up to 2 MW and file for Commission approval of that agreement.<sup>32</sup> A utility must enable net metering<sup>33</sup> for each customer-owned renewable generation facility interconnected to the utility's electrical grid by installing, at no additional cost to the customer, metering equipment capable of measuring the difference between the electricity supplied to the customer from the utility and the electricity generated by the customer and delivered to the utility's electric grid. During any billing cycle, excess customer-owned renewable generation delivered to the utility's electric grid must be credited to the customer's energy consumption for the next month's billing cycle. These energy credits must

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<sup>24</sup> Section 366.91(2)(d), F.S., defines the term "renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

<sup>25</sup> Section 366.91(3) and (4), F.S.

<sup>26</sup> The term "net metering" is defined to mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site. Section 366.91(2)(c), F.S.

<sup>27</sup> The term "customer-owned renewable generation" is defined to mean an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. Section 366.91(2)(b), F.S.

<sup>28</sup> Section 366.91(5), F.S.

<sup>29</sup> Section 366.91(6), F.S.

<sup>30</sup> This is Florida Power and Light, Duke Energy Florida, Tampa Electric Company, Gulf Power, and Florida Public Utilities Company.

<sup>31</sup> The rule defines the term "customer-owned renewable generation" to mean an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. The term "customer-owned renewable generation" does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

<sup>32</sup> Rule 25-6.065 Interconnection and Net Metering of Customer-Owned Renewable Generation, Florida Administrative Code.

<sup>33</sup> The rule defines the term "net metering" to mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on-site.

accumulate and be used to offset the customer's energy usage in subsequent months for a period of not more than twelve months. At the end of each calendar year, the utility must pay the customer for any unused energy credits at an average annual rate based on the investor-owned utility's COG-1, as-available energy tariff.<sup>34, 35</sup> The customer must continue to pay the applicable customer charge and applicable demand charge for the maximum measured demand during the billing period.<sup>36</sup>

### III. Effect of Proposed Changes:

The bill proposes a constitutional amendment to the provisions that authorize the Legislature to prohibit property appraisers, in appraising real property for ad valorem tax purposes, from considering the value of improvements to residential real property that constitute either enhancements to the property's wind resistance or the installation of a renewable energy device. Under the bill, the provisions on improving the property's resistance to wind damage would remain limited to real property used for residential purposes. The provisions on installation of a renewable energy source device would be expanded to all real property, but only when the installation is by an "end-use customer" of a device "that is primarily intended to offset part or all of that end-use customer's electricity demands." The quoted language precludes any person or entity from getting an exclusion from ad valorem taxes for the value of a renewable energy source device that was installed primarily for the purpose of producing electricity for sale, whether installed by a non-utility or a utility.

The amendment is permissive; the Legislature is not required to implement it and it has no effect unless implemented.

### IV. Constitutional Issues:

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

The fiscal impact of this bill on local government's ad valorem tax revenues is uncertain. If it passes both the Legislature and the electorate, and if SB 922 or other implementing legislation is passed and becomes law, and if renewable energy source devices are installed on nonresidential real property, then some local governments may lose an opportunity for an unknown amount of an increase in ad valorem tax revenues that they would have had in absence of this bill and implementing legislation.

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

None.

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<sup>34</sup> The investor-owned utility's COG-1, as-available energy tariff price is the price a utility would receive if it sold excess electricity on the wholesale market with no contract. This omits any capacity payment and is basically fuel cost. It is basically the equivalent of the utility's as-available, full avoided cost price, which means it is basically the cost of fuel for that utility to produce that amount of electricity at that time.

<sup>35</sup> Essentially this means that the primary benefit to the customer is in producing electricity and avoiding that amount of purchases from the utility. An additional benefit is that excess-generation credits are carried over and when used also offset purchases at the retail price. If these carried-over credits are not used before the end of a calendar year (or before leaving the utility) they are purchased at the utility's cost of producing energy, which is basically its fuel cost.

<sup>36</sup> This ensures that the customer continues to pay its share of cost recovery for generation and transmission facilities.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

A proposed constitutional amendment such as this one must be passed by three-fifths of the membership of each house of the Legislature.<sup>37</sup> A proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than 90 days after such filing.<sup>38</sup> To pass, a proposed constitutional amendment must be approved by vote of at least 60 percent of the electors voting on the measure, and if passed, unless otherwise specifically provided for elsewhere in this constitution, it becomes effective as an amendment on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.<sup>39</sup>

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

The fiscal impact of this bill on local government's ad valorem tax revenues is uncertain. If it passes both the Legislature and the electorate, and if SB 922 or other implementing legislation is passed and becomes law, and if renewable energy source devices are installed on nonresidential real property, then some local governments may lose an opportunity for an unknown amount of an increase in ad valorem tax revenues that would have resulted from including the value of the renewable energy source device in the ad valorem tax appraised value in absence of this bill and implementing legislation.

**B. Private Sector Impact:**

The bill may provide an incentive for owners of nonresidential property to install renewable energy source devices as this will no longer result in increased ad valorem taxes.

The Solar Foundation recently released its *National Solar Jobs Census 2012: A Review of the U.S. Solar Workforce*. The report notes a 77 percent compound annual growth rate in photovoltaic installed capacity between 2006 and 2011<sup>40</sup> and a total of 119,016 solar industry jobs in 2012, an increase of 13.2 percent over 2011.<sup>41</sup> The report also notes:

The results of this year's Census confirm that one of the major factors contributing to this growth is the continued decline in the price of solar products.

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<sup>37</sup> FLA. CONST. art. XI, s. 1.

<sup>38</sup> FLA. CONST. art. XI, s. 5.

<sup>39</sup> *Id.*

<sup>40</sup> Page 9.

<sup>41</sup> Page 17.



Over the last three years, component prices have dropped dramatically, with a 44% decline in 2011 alone.... This decline in PV module prices is mirrored by a similar decrease in total average installed system costs, estimated to have declined by one-third over the same period.<sup>42</sup>

This report indicates that one of the major drivers in increasing photovoltaic installed capacity and solar jobs is the decreasing overall cost of this capacity, which may include the avoidance of an increase in ad valorem tax that this bill allows.

As long as any excess electricity produced by any new renewable energy source device is sold to utilities under current law (at the purchasing utility's full avoided cost<sup>43</sup> and with no third party sales), there will be no near-term fiscal impact on utilities' ratepayers. There may be some customer fiscal impacts in the longer term. Some potential impacts could be positive; for example, the avoidance of the costs of construction of a new power plant. Some potential impacts could be negative. The Florida Supreme Court noted in *PW Ventures* that when a regulated utility loses sales revenue, this revenue must be made up by the remaining customers since the fixed costs of the regulated systems would not have been reduced. Loss of one large customer is not the only event that will produce this result; it will happen any time a utility loses enough sales revenue that it can no longer recover all of its costs, including a loss of revenue due to customers' energy production or, for that matter, customers' conservation and efficiency efforts.

**C. Government Sector Impact:**

The bill may have some impact on the workload of property appraisers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 922 is the implementing bill for this proposed constitutional amendment.

SJR 916 provides:

(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:

(2) The installation *by an end-use customer* of a renewable energy source device *that is primarily intended to offset part or all of that end-use customer's electricity demands.*

The Department of Revenue's Legislative Bill Analysis states that this language makes it "unclear whether the property appraiser must consider the value of the renewable energy source device should that end-use customer no longer hold title to the real property." However:

<sup>42</sup> Page 10.

<sup>43</sup> See discussion above under *Self-Generation*.

- The italicized language is little different in effect from the existing constitutional provision that authorizes the Legislature to prohibit a property appraiser from considering the value of a change or improvement that is “for the purpose of improving the property’s resistance to wind damage.” Although this constitutional provision has not yet been implemented, it is doubtful that it would be implemented in such a way as to require a property appraiser to take a property owner’s word that any improvement qualifies for the exclusion from consideration. Instead, an implementing statute very likely would require evidence that the subject improvement qualifies not only as one done for the purpose of improving wind resistance but also as one that is within accepted industry standards as having the effect of improving wind resistance. And under such a statute, once this qualification was established, the benefit of exclusion would attach to the property and transfer with the property upon any conveyance.
- The italicized language creates a similar qualification or pre-condition. It conditions application of the exclusion on the installation of a renewable energy source device being done by a property owner/customer primarily to offset that customer’s purchases of electricity from a utility. The installation **does not qualify** for the benefit of exclusion from ad valorem tax if done primarily for the purpose of producing electricity for sale, either by a utility or a non-utility. Again, a property appraiser will have to determine that the qualification is met in order to apply the exclusion, but once the improvement is determined to qualify, the benefit attaches to the property and is transferable with the property.

#### **VIII. Statutes Affected:**

This bill proposes substantially amending Article VII, section 4 of the Florida Constitution.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

##### **B. Amendments:**

None.