

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 865 Renewable Energy Source Devices

**SPONSOR(S):** Rodrigues

**TIED BILLS:** HB 867 **IDEN./SIM. BILLS:** SJR 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	11 Y, 0 N	Whittier	Keating
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Florida Constitution (Constitution) authorizes local government *ad valorem* taxes on real property and tangible personal property, assessment of taxes, and exemptions to these taxes. Article VII, section 4 of the Constitution includes the following provisions:

(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.

This provision only addresses residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of this provision.

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device, or a component of such a device, from the tangible personal property tax. The second amendment prohibits a property appraiser from considering the installation of a renewable energy source device, or a component of such a device, in the determination of property value for the purpose of *ad valorem* taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. The second provision is permissive and does not require the Legislature to enact legislation.

House staff expects that the joint resolution will have a negative impact on local property tax revenues, assuming current millage rates. The Revenue Estimating Conference has not yet determined the fiscal impact of the joint resolution.

The joint resolution provides an effective date of January 1, 2017.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.**

**The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida Constitution (Constitution) authorizes finance and taxation, including local government *ad valorem* taxes on real property and tangible personal property,<sup>1</sup> assessment of taxes,<sup>2</sup> and exemptions to these taxes.<sup>3</sup>

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

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the 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 device is installed and is being operated.<sup>4</sup> 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.<sup>5</sup>

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

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 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:<sup>6</sup>

- (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.

The constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.

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

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<sup>1</sup> FLA. CONST. art. VII, s. 9.

<sup>2</sup> FLA. CONST. art. VII, s. 4.

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

<sup>4</sup> ss. 196.175 and 196.012(14), F.S. (2000)

<sup>5</sup> *Id.*

<sup>6</sup> The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.

and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980.

## Property Valuation and Property Appraisals

Article VII, section 4 of the 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”<sup>7</sup> is defined as 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 limitation<sup>8</sup> or the value of non-homestead property after the 10 percent cap.<sup>9</sup> 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.

## Tangible Personal Property Tax

Local governments may levy *ad valorem* tax assessments on real property<sup>10</sup> and tangible personal property. “Tangible personal property” means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.<sup>11</sup> Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.<sup>12</sup> Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from *ad valorem* taxation of up to \$25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business.<sup>13</sup>

The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than \$25,000.<sup>14</sup> The Value Adjustment Board<sup>15</sup> reviews petitions for tangible personal property assessments using substantially the same procedures as for petitions for real property assessments.<sup>16</sup>

## Constitutional Provision for Amending the Constitution

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<sup>7</sup> s. 192.001(2), F.S.

<sup>8</sup> 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: 3 percent of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. (FLA. CONST. art. VII, s. 4(d)(1).)

<sup>9</sup> 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.

<sup>10</sup> Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably.

<sup>11</sup> s. 192.001(11)(d), F.S.

<sup>12</sup> s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at <http://dor.myflorida.com/dor/property/tpp/> (last visited March 11, 2015).

<sup>13</sup> s. 196.183(1), F.S.

<sup>14</sup> s. 196.183(3), F.S.

<sup>15</sup> Ch. 194, F.S., provides for administrative and judicial review of *ad valorem* tax assessments. Each county in Florida has a value adjustment board (VAB) composed of five members that hears petitions pertaining to property assessments made by the county property appraiser. The VAB hears evidence from both petitioners and property appraisers as to whether properties are appraised at their fair market value, as well as issues related to tax exemptions, deferments, and portability.

<sup>16</sup> s. 194.011, F.S.

The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house.<sup>17</sup> The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State's office.<sup>18</sup> The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.<sup>19</sup>

### Effect of Proposed Changes

The joint resolution proposes two amendments to the Constitution. Both relate to the inclusion of the assessed value of a renewable energy source device in determining *ad valorem* taxes.

First, the bill amends article VII, section 3 of the Constitution to exempt the assessed value of a renewable energy source device, or a component of such a device,<sup>20</sup> from the tangible personal property tax.

Second, the bill amends article VII, section 4 of the Constitution to prohibit a property appraiser from considering the installation of a renewable energy source device, or a component of such a device, in the determination property value for the purpose of *ad valorem* taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. The second provision is permissive and does not require the Legislature to enact legislation. Tied bill HB 867 implements the provisions of the joint resolution.

The joint resolution provides an effective date of January 1, 2017. Bills that propose to amend the constitution must pass each chamber by three-fifths of the membership. The amendment then must be placed on the ballot and approved by 60 percent of the voters.

#### B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing constitutional amendments, it does not contain bill sections. The joint resolution proposes to amend article VII, sections 3 and 4 of the State Constitution, to require the Legislature, by general law, to exempt the assessed value of a renewable energy source device or a component thereof from the tangible personal property tax, to allow the Legislature, by general law, to prohibit the consideration of the installation of such device or component in determining the assessed value of residential and nonresidential real property for the purpose of *ad valorem* taxation. The joint resolution provides an effective date of January 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>17</sup> FLA. CONST. art. XI, s. 1.

<sup>18</sup> FLA. CONST. art. XI, s. 5(a) provides that the amendment may be voted on at a special election held for that purpose more than 90 days from the filing with the Secretary of State if so provided in a law passed by three-fourths of the members of each chamber.

<sup>19</sup> FLA. CONST. art. XI, s. 5(e).

<sup>20</sup> Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

1. Revenues:  
See *Fiscal Comments*.

2. Expenditures:  
See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the joint resolution will result in lower tangible personal property tax expenses and may result in lower real property tax expenses for taxpayers who make qualifying improvements to real property. This may encourage the purchase of renewable energy source devices.

D. FISCAL COMMENTS:

House staff expects that the bill will have a negative impact on local property tax revenues, assuming current millage rates. The Revenue Estimating Conference has not yet heard this bill so the fiscal impact on local governments is currently unknown.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

Article XI, section 1 of the Florida Constitution, provides for proposed changes to the Constitution by the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, s. 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.<sup>21</sup>

B. RULE-MAKING AUTHORITY:

N/A

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<sup>21</sup> FLA. CONST. art. XI, s. 5(e)

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**