

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 867 Renewable Energy Source Devices

SPONSOR(S): Rodrigues and others

TIED BILLS: HJR 865 **IDEN./SIM. BILLS:** SB 402

| 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

This bill implements HJR 865, which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. These amendments to the Constitution exempt the assessed value of a renewable energy source device, or a component of such a device, from tangible personal property taxes. They also authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component of such a device, in determining the assessed value of real property for the purpose of *ad valorem* taxation.

The bill amends s. 193.624, F.S., to expand the definition of "renewable energy source device" to include devices for the storage of solar energy, wind energy, and energy derived from geothermal deposits. The bill also amends s. 193.624, F.S., to prohibit the consideration of the installation of a renewable energy device, or a component of such device, from assessments of *all* real property, as opposed to just for residential property, beginning January 1, 2017.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., or a component of such device, from the tangible personal property tax.

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 estimated the fiscal impact of the bill.

The act will take effect January 1, 2017, if HJR 865 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose. The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.

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,¹ assessment of taxes,² and exemptions to these taxes.³

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.⁴ 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.⁵

In December of 2000, the last of these 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, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:⁶

¹ FLA. CONST. art. VII, s. 9.

² FLA. CONST. art. VII, s. 4.

³ FLA. CONST. art. VII, s. 3.

⁴ ss. 196.175 and 196.012(14), F.S. (2000)

⁵ *Id.*

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

(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.

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 the legislation passed in 1980.

In 2013, the Legislature created s. 193.624, F.S., which provides that in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered. The law applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. The wind mitigation portion of the constitutional amendment for residential properties was not included in the law.

"Renewable energy source devices" 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, such equipment does not include conventional backup systems of any type.
- 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.⁷

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"⁸ 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 limitation⁹ or the value of non-homestead property after the 10 percent cap.¹⁰ In addition,

⁷ s. 193.624(1), F.S.

⁸ s. 192.001(2), F.S.

⁹ 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. See Art. VII, s. 4(d)(1), Fla. Const.

“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.

Section 193.011, F.S., lists the following factors to be taken into consideration when a property appraiser is 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 the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, 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;
- (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.

¹⁰ 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.

Tangible Personal Property Tax

Local governments may levy *ad valorem* tax assessments on real property¹¹ 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.¹² 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.¹³ 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.¹⁴

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 \$25,000.¹⁵ The Value Adjustment Board¹⁶ reviews petitions for tangible personal property assessments using substantially the same procedures as for petitions for real property assessments.¹⁷

Tied House Joint Resolution Amending the Constitution (HJR 865)

The Constitution authorizes finance and taxation, including local government *ad valorem* taxes on real property and tangible personal property,¹⁸ assessment of taxes,¹⁹ and exemptions to these taxes.²⁰ Article VII, section 4 of the Constitution specifically provides for the following:

- (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.

The constitutional provision only addresses residential property and does not require the Legislature to enact legislation.

As noted previously, the Legislature implemented this prohibition in s. 193.624, F.S., in 2013.

HJR 865 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.

The first exempts the assessed value of a renewable energy source device, or a component of such a device, from the tangible personal property tax.

¹¹ 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.

¹² s. 192.001(11)(d), F.S.

¹³ 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).

¹⁴ s. 196.183(1), F.S.

¹⁵ s. 196.183(3), F.S.

¹⁶ 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.

¹⁷ s. 194.011, F.S.

¹⁸ FLA. CONST. art. VII, s. 9.

¹⁹ FLA. CONST. art. VII, s. 4.

²⁰ FLA. CONST. art. VII, s. 3.

The second prohibits a property appraiser from considering the installation of renewable energy source devices and related components in determining property value for the purpose of *ad valorem* taxation. This proposed amendment expands the 2008 constitutional amendment by specifying that the provision applies the renewable energy source device, *or a component of such device*, and by extending the exemption to all real property, not just real property used for residential purposes. The provision is permissive and does not require the Legislature to enact legislation.

Effect of Proposed Changes

The bill implements HJR 865, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. These amendments exempt the assessed value of a renewable energy source device, or a component of such a device, from tangible personal property taxes. They also authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component of such a device,²¹ in determining the assessed value of all real property (not just residential) for the purpose of *ad valorem* taxation, as of January 1, 2017.

The bill expands the definition of “renewable energy source device” in s. 193.624, F.S., to include devices for the storage of solar energy, wind energy, and energy derived from geothermal deposits. This is added to the following definition provided in the *Present Situation* section:

“Renewable energy source devices” 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, such equipment does not include conventional backup systems of any type.
- 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. Changes to also

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., or any component of such a device, from the tangible personal property tax.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.624, F.S., relating to assessments of real property.

Section 2. Creates s. 196.182, F.S., exempting a renewable energy source device from the tangible personal property tax.

Section 3. Reenacts s. 193.155, F.S., relating to homestead assessments.

²¹ Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

Section 4. Reenacts s. 193.1554, F.S., relating to assessment of non-homestead residential property.

Section 5. Provides an effective date of January 1, 2017, if HJR or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the November 2016 election or at an earlier special election specifically authorized by law for that purpose.

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:

See *Fiscal Comments*.

2. Expenditures:

See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in lower tangible personal property tax expenses and 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:

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 would be implementing constitutional amendments adopted by Florida voters, the portion regarding the prohibition of adding to property value based on the installation of a renewable energy source device, or component of such device, is permissive and only authorizes, not requires the Legislature to act. The portion exempting renewable energy source devices, or components of such devices, from personal property taxation is not permissive.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES