

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 195 Renewable Energy Source Devices

SPONSOR(S): Rodrigues

TIED BILLS: HJR 193 **IDEN./SIM. BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N	Whittier	Keating
2) Finance & Tax Committee	14 Y, 0 N	Dugan	Langston
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property. HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, in determining the assessed value of any 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 source device, or a component thereof, from assessments of *all* real property, rather than 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 thereof, from ad valorem tax on tangible personal property.

The Revenue Estimating Conference estimates that if HJR 193 should pass, the local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -\$17.2 million, growing to -\$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

The act will take effect January 1, 2017, if HJR 193 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 reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.¹ The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.² The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,³ and it provides for specified assessment limitations, property classifications and exemptions.⁴ After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.⁵

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, “just valuation” is synonymous with “fair market value,” and is defined as what a willing buyer would pay a willing seller for property in an arm’s length transaction.⁶

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;

¹ Fla. Const. art. VII, s. 1(a).

² 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. Section 192.001(11)(d), F.S., defines “tangible personal property” as 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 and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

³ Fla. Const. art. VII, s. 4.

⁴ Fla. Const. art. VII, ss. 3, 4, and 6.

⁵ s. 196.031, F.S.

⁶ s. 193.011, F.S. *See, also, Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

- (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.

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.⁷ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁸

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.⁹ 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.¹⁰ A single return must be filed for each site in the county where the owner of tangible personal property transacts business.¹¹ 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 \$25,000.¹²

History of Renewable Energy Property Tax Exemptions

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, the Legislature implemented this exemption for real property on which a renewable energy source device is installed and operated.¹³ 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 implementing statute limited the exemption to 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

⁷ The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

⁸ Fla. Const. art. VII, s. 4(i).

⁹ 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 Nov. 13, 2015).

¹⁰ Fla. Const., article VII, s. 3.

¹¹ s. 196.183(1), F.S.

¹² s. 196.183(3), F.S.

¹³ ss. 196.175 and 196.012(14), F.S. (2000)

- Eight percent of the assessed value of the property immediately following the installation.¹⁴

In December 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 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:¹⁵

- (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 2008 constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.¹⁶

The 2008 constitutional 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 the device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

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.

¹⁴ *Id.*

¹⁵ The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.

¹⁶ Ch. 2013-77, Laws of Fla.

- 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.¹⁷

Effect of Proposed Changes

The bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. HJR 193 proposes to exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem tax on tangible personal property. HJR 193 also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof,¹⁸ 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 provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

Specifically, the bill creates s. 196.182, F.S., to exempt a renewable energy source device, or any component thereof from ad valorem taxation. It amends s. 193.624, F.S., to prohibit the consideration of an increase in the just value of a property attributable to the installation of a renewable energy source device, or a component thereof, in determining assessments of *all* real property, rather than just for residential property, beginning January 1, 2017. The bill clarifies that the provision applies to new and existing real property.

The bill expands the definition of “renewable energy source device” in s. 193.624, F.S., to include power conditioning and storage devices that store or use solar energy (in addition to wind energy) or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

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 or any component thereof from ad valorem taxation.

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

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

Section 5. Provides an effective date of January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the November 2016 general election or at an earlier special election specifically authorized by law for that purpose.

¹⁷ s. 193.624(1), F.S.

¹⁸ Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

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 ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimates that if HJR 193 should pass, the local government revenue impact of HB 195 beginning in Fiscal Year 2017-18 would be -\$17.2 million, growing to -\$21.2 million in 2020-21, holding the 2014 statewide average property tax rates constant.

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. However, an exemption may apply because the fiscal impact may be insignificant.

Most of the negative revenue impact associated with the passage of HJR 193 and HB 195 is attributable to the requirement in HJR 193 exempting renewable energy source devices, or components thereof, from ad valorem taxation on tangible personal property. This provision, though potentially subject to general law provisions, is required (i.e., not optional on the Legislature's part) and would occur even without passage of HB 195. This contrasts to the provisions regarding the prohibition of adding to real property value based on the installation of a renewable energy source device, or component thereof, which the Legislature is not required to enact. Consequently, HB 195 may implicate the municipal/county mandates provisions of the constitution only to the extent that the non-required provisions of HJR 193 are enacted, thereby greatly reducing the potential negative local revenue impact of the bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.