

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 195 Renewable Energy Source Devices
SPONSOR(S): Regulatory Affairs Committee; Rodrigues and others
TIED BILLS: CS/HJR 193 **IDEN./SIM. BILLS:** CS/CS/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 | 17 Y, 0 N, As CS | Whittier | Hamon |

SUMMARY ANALYSIS

This bill implements CS/HJR 193 (the "joint resolution"), which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. The joint resolution proposes to exempt the assessed value of a renewable energy source device from ad valorem tax on tangible personal property. It also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device 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 and energy derived from geothermal deposits. The bill also amends that section to prohibit the consideration of the installation of a renewable energy source device from assessments of *all* real property, rather than just for residential property, beginning January 1, 2017. Consistent with the joint resolution, the bill provides for expiration of this provision on December 31, 2036.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., from ad valorem tax on tangible personal property. Consistent with the joint resolution, the bill provides for expiration of this provision on December 31, 2036.

The Revenue Estimating Conference (REC) estimates the impact of the bill to be either zero or negative indeterminate because it is subject to further approval or rejection of the joint resolution by the voters. If the joint resolution is approved by the voters, there will be an impact from its provisions related to tangible personal property, which need no further implementing language and will occur regardless of whether or not the bill passes. The REC estimates those impacts on local government revenues beginning in Fiscal Year 2017-18 will be -\$16.6 million growing to -\$20.4 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant. The bill will result in further local government impacts of -\$0.4 million beginning in Fiscal Year 2017-18, growing to -\$0.6 million in Fiscal Year 2020-21.

The bill will take effect January 1, 2017, if CS/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.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes and Assessments

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;

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).

- (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.

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

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 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, 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 implemented this exemption for real property on which a renewable energy source device is installed and operated.¹³ Exemptions were granted for devices installed during the period of January 1, 1980, through December 31, 1990, and were limited to 10 years from the time the exemption was granted, as provided in the

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*, <http://dor.myflorida.com/dor/property/tpp/> (last visited Jan. 27, 2016).

¹⁰ FLA. CONST. art. VII, s. 3.

¹¹ s. 196.183(1), F.S.

¹² s. 196.183(3), F.S.

¹³ Ch. 80-163, Laws of Fla.

constitution. For example, 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
- Eight percent of the assessed value of the property immediately following the installation.¹⁴

In December 2000, the last of these exemptions expired.

In 2008, through HB 7135, the Legislature removed the expiration date of the property tax exemption, thereby allowing property owners to apply for the exemption for devices installed no earlier than January 1, 2009.¹⁵ The period of each new exemption, however, remained at 10 years. Through the bill, the Legislature 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:
- (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 addressed only residential property and authorized, but did not require, legislative implementation. 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, thus the 2008 constitutional amendment nullified the property tax exemption that the Legislature had just passed.

Section 193.624, F.S., currently 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 a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property. The law 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.

¹⁴ *Id.*

¹⁵ Ch. 2008-227, Laws of Fla.

¹⁶ Ch. 2013-77, Laws of Fla.

- 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.¹⁷

Effect of Proposed Changes

The bill implements CS/HJR 193 (the “joint resolution”), which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. The joint resolution proposes to exempt the assessed value of a renewable energy source device from ad valorem tax on tangible personal property. The joint resolution also proposes to authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device in determining the assessed value of all real property (not just residential) for the purpose of ad valorem taxation, beginning 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.

To implement the joint resolution, the bill creates s. 196.182, F.S., to exempt a renewable energy source device from ad valorem tax on tangible personal property. Consistent with the joint resolution, the bill provides for expiration of this provision on December 31, 2036.

The bill also amends s. 193.624, F.S., to prohibit the consideration of an increase in the just value of real property attributable to the installation of a renewable energy source device in determining assessments of *all* real property, not just residential property, beginning January 1, 2017. The bill specifies that this provision applies to new and existing real property. The bill also clarifies that the provision applies to the installation of a renewable energy source device on residential property between January 1, 2013, and December 31, 2016. The bill amends 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 or energy derived from geothermal deposits* to generate electricity or mechanical forms of energy.
- Pipes, ducts, refrigerant handling systems, *wiring, structural supports, and other components used as integral parts of such systems*, but does not include any equipment or structures that would be required in the absence of the renewable energy source device.

Consistent with the joint resolution, the bill provides for expiration of these amendments to s. 193.624, F.S., on December 31, 2036. The bill provides that the text of this section shall revert to the text in existence on December 31, 2016, but provides that any amendment to that text enacted apart from the bill shall continue to operate to the extent that such amendment is not dependent on the portion of the text that has expired.

¹⁷ s. 193.624(1), F.S.
STORAGE NAME: h0195e.RAC
DATE: 1/28/2016

B. SECTION DIRECTORY:

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

Section 2. Provides an expiration date for the amendments to s. 193.624, F.S., and provides for continued operation of the current text of that section under certain circumstances.

Section 3. Creates s. 196.182, F.S., exempting a renewable energy source device that is considered tangible personal property from ad valorem taxation and providing an expiration date.

Section 4. Reenacts s. 193.155, F.S., relating to homestead assessments.

Section 5. Reenacts s. 193.1554, F.S., relating to non-homestead residential property assessments.

Section 6. Provides an effective date of January 1, 2017, if CS/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.

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 (REC) estimates the impact of the bill to be either zero or negative indeterminate because it is subject to further approval or rejection of CS/HJR 193 by the voters. If the joint resolution is approved by the voters, there will be an impact from its provisions related to tangible personal property, which need no further implementing language and will occur regardless of whether or not the bill passes. The REC estimates those impacts on local government revenues beginning in Fiscal Year 2017-18 will be -\$16.6 million growing to -\$20.4 million in Fiscal Year 2020-21, holding the 2015 statewide average property tax rates constant. The bill will result in further local government impacts of -\$0.4 million beginning in Fiscal Year 2017-18, growing to -\$0.6 million in Fiscal Year 2020-21.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2016, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the phrase “or a component thereof” from references to “renewable energy source device.”
- Amended the definition of “renewable energy source device” to include wiring, structural supports, and other components used as integral parts of such “systems” and to exclude any equipment or structures that would be required in the absence of the renewable energy source device.
- Provided an expiration date of December 31, 2036, for the substantive provisions created by the bill.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.