

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 1351	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Renewable Energy Source Devices	118	Y's 0	N's
<b>SPONSOR(S):</b>	Commerce Committee; Ways & Means Committee; Energy & Utilities Subcommittee; Rodrigues	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/SB 90			

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**SUMMARY ANALYSIS**

CS/CS/CS/HB 1351 passed the House on May 3, 2017, as CS/SB 90 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on May 4, 2017.

In 2016, the Legislature passed CS/HJR 193, a joint resolution proposing an amendment to the Florida Constitution to authorize the Legislature, by general law, to establish certain tax treatment for renewable energy source devices installed on nonresidential real property. The amendment was placed on the ballot on August 30, 2016, as Amendment 4, which was approved by 73% of the voters in the election. The amendment will take effect on January 1, 2018, and expire on December 31, 2037.

This bill implements the provisions of Amendment 4 by:

- Prohibiting the consideration of 80% of the just value of a nonresidential real property attributed to a renewable energy source device installed on or after January 1, 2018, in determining the assessed value of the property, except for certain installations in fiscally constrained counties;
- Exempting from ad valorem taxation 80% of the assessed value of a renewable energy source device that is considered tangible personal property and that is installed on real property on or after January 1, 2018, and including certain installations made before January 1, 2018, to supply power to municipal electric utilities but excluding certain installations in fiscally constrained counties; and
- Exempting from ad valorem taxation, including the tangible personal property tax, 80% of the assessed value of a renewable energy source device affixed to property owned or leased by the U.S. Department of Defense for use by the military.

Consistent with Amendment 4, the bill provides for expiration of these provisions on December 31, 2037. In addition, the bill establishes disclosure requirements and penalties related to certain agreements to sell or lease distributed energy generation systems, and it provides for implementation by the Department of Business and Professional Regulation.

The provisions of the bill that implement Amendment 4 will have a negative impact on local government revenues. The Revenue Estimating Conference has not estimated these revenue impacts for the bill that passed. The remaining provisions of the bill appear to have no impact on state and local government revenues or expenditures.

The bill was approved by the Governor on June 16, 2017, ch. 2017-118, L.O.F., and will become effective on July 1, 2017.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1351z1.EUS

**DATE:** May 5, 2017

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### *Ad Valorem Taxation of Real Property and Tangible Personal Property*

The Florida Constitution provides for finance and taxation, including local government ad valorem taxes on real property and tangible personal property,<sup>1</sup> assessment of property for tax purposes,<sup>2</sup> and exemptions to these taxes.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>6</sup> and it provides for specified assessment limitations, property classifications, and exemptions.<sup>7</sup> 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.<sup>8</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>9</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.<sup>10</sup>

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes.<sup>11</sup> 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.<sup>12</sup>

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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> FLA. CONST. art. VII, s. 1(a).

<sup>5</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. 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.

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

<sup>7</sup> FLA. CONST. art. VII, ss. 3, 4, and 6.

<sup>8</sup> s. 196.031, F.S.

<sup>9</sup> s. 193.062, F.S.; *see also* FLA. DEP’T OF REVENUE, *Tangible Personal Property*, <http://dor.myflorida.com/dor/property/tpp/> (last visited Mar. 17, 2017).

<sup>10</sup> FLA. CONST. article VII, s. 3.

<sup>11</sup> The constitutional provisions in art. VII, s. 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

<sup>12</sup> 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).

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property. For example, 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.<sup>13</sup>

The Legislature has implemented this prohibition, in part, through s. 193.624, F.S. The statute prohibits a property appraiser who is determining the assessed value of real property used for *residential* purposes from considering an increase in the just value of the property attributable to the installation of a renewable energy source device.<sup>14</sup> The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property.<sup>15</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:<sup>16</sup>

- 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; and
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

In 2016, the Legislature passed CS/HJR 193, a joint resolution proposing an amendment to the Florida Constitution that would authorize the Legislature, by general law, to establish certain tax treatment for solar and renewable energy source devices installed on *all* real property, not just residential property. Specifically, the amendment authorized the Legislature to:

- Prohibit a property appraiser from considering the installation of such devices in determining the assessed value of *all* real property for the purpose of ad valorem taxation; and
- Exempt from ad valorem taxation the assessed value of such devices subject to tangible personal property tax.

Pursuant to CS/HB 195, the amendment was placed on the ballot on August 30, 2016, as "Amendment 4."<sup>17</sup> Amendment 4 was approved by 73% of the voters in the election and, by its terms, will take effect on January 1, 2018, and expire on December 31, 2037.<sup>18</sup>

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<sup>13</sup> FLA. CONST. art. VII, s. 4(i).

<sup>14</sup> s. 193.624(2), F.S.

<sup>15</sup> s. 193.624(3), F.S.

<sup>16</sup> s. 193.624(1), F.S.

<sup>17</sup> FLA DEP'T OF STATE, *Constitutional Amendments*,

<http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=93> (last visited March 17, 2017).

<sup>18</sup> *Id.*

Several distinct consumer protection laws are codified in Parts I through VII of Chapter 501, F.S. Part II of Chapter 501, F.S., establishes protections related to retail installment contracts.

### **Effect of Proposed Changes**

#### *Ad Valorem Tax Treatment of Renewable Energy Source Devices*

The bill implements the provisions of Amendment 4.

The bill expands the definition of “renewable energy source device” in s. 193.624, F.S, by including wiring, structural supports, and other components used as integral parts of renewable energy source devices. The bill clarifies that equipment or structures required in the absence of a renewable energy source device are not integral parts to such devices. The bill also provides that the definition of “renewable energy source device” includes power conditioning and storage devices that store or use solar, wind, or geothermal energy. The bill further clarifies that the definition of “renewable energy source device” does not include equipment on the distribution or transmission side of the point at which such a device is interconnected to an electric utility’s distribution grid or transmission lines, i.e., equipment on the utility side of the interconnection point between the renewable energy source device and the utility’s system.

The bill expands s. 193.624, F.S., to limit the impact of a renewable energy source device installation on the assessed value of real property used for nonresidential purposes. For devices installed to real property used for nonresidential purposes, the bill prohibits the consideration of 80% of the just value of the real property attributed to the renewable energy source device installed on or after January 1, 2018. This prohibition does not apply to renewable energy source devices that are installed as part of a project planned for a location in a fiscally constrained county<sup>19</sup> and for which an application for a comprehensive plan amendment or planned unit development zoning has been filed with the county on or before December 31, 2017.

Further, the bill exempts from ad valorem taxation 80% of the assessed value of a renewable energy source device that is considered tangible personal property if the device:

- Is installed on real property on or after January 1, 2018;
- Was installed before January 1, 2018, to supply a municipal electric utility located within a consolidated government;<sup>20</sup> or
- Was installed after August 30, 2016, on municipal land as part of a project incorporating other renewable energy source devices under common ownership on municipal land for the sole purpose of supplying a municipal electric utility with at least 2 megawatts and no more than 5 megawatts of alternating current power when the renewable energy source devices in the project are used together.<sup>21</sup>

This exemption does not apply to any renewable energy source device which is installed as part of a project planned for a location in a fiscally constrained county and for which an application for a

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<sup>19</sup> Pursuant to s. 218.67, F.S., “fiscally constrained counties” are those designated as a “rural area” by the governor or where on a one mill levy would produce less than \$5 million in tax revenue. Twenty-seven counties in Florida are currently designated as fiscally constrained. For a list of these counties, *see* FLA. DEP’T. OF REVENUE, *Property Tax, Distribution to Fiscally Constrained Counties*, <http://floridarevenue.com/dor/property/cofficials/fiscalc/pdf/fcco081210.pdf> (last visited May 10, 2017).

<sup>20</sup> This provision appears to apply the exemption to a 12 megawatt (MW) solar farm that was installed in 2010 to supply power to JEA and to an additional 27 MW of solar facilities planned for installation in 2017. *See* JEA 2017 Ten Year Site Plan, Mar. 29, 2017, at 5 and 12, *available at* <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2017/JEA.pdf>.

<sup>21</sup> This provision appears to apply the exemption to a 3.15 MW solar farm commissioned in December 2016 on Lakeland Airport property. *See* Lakeland Electric 2017 Ten Year Site Plan, Mar. 29, 2017, at 4-11 and 4-12, *available at* <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2017/Lakeland%20Electric.pdf>.

comprehensive plan amendment or planned unit development zoning has been filed with the county on or before December 31, 2017.

The bill also exempts from ad valorem taxation, including the tangible personal property tax, 80% of the assessed value of a renewable energy source device affixed to property owned or leased by the U.S. Department of Defense for use by the military.<sup>22</sup>

Consistent with Amendment 4, the bill provides for expiration of these provisions on December 31, 2037.

### *Consumer Protection Laws related to Distributed Energy Generation Systems*

The bill creates a new part of Chapter 520, F.S., (Part II) to govern the sale or lease of distributed energy generation systems. Existing Part II of Chapter 520, F.S., related to retail installment contracts, is renumbered as Part III, and all subsequent parts of Chapter 520, F.S., are renumbered accordingly. The bill provides that the new Part II is supplemental to the renumbered Part III but shall control in the event of a conflict.

The bill defines a “distributed energy generation system” as a device or system that:

- Is used to generate or store electricity;
- Has an electric delivery capacity, individually or in connection with other similar devices or systems, of greater than one kilowatt or one kilowatt-hour; and
- Is primarily intended for on-site use.

The term does not include an electric generator intended for occasional use.

The bill provides that a seller<sup>23</sup> who installs a distributed energy generation system must comply with applicable safety standards established by the Department of Business and Professional Regulation pursuant to ch. 489 and part IV of ch. 553, F.S. Chapter 489, F.S., provides for regulation of the construction industry, including licensure of electrical contractors, among others. Part IV of ch. 553, F.S., governs the Florida Building Code. The bill specifies that a seller who is also an installer must be licensed under ch. 489, F.S.

The bill requires that each agreement<sup>24</sup> governing the sale or lease of a distributed energy generation system must include, at a minimum, a written statement that is printed in at least 12-point type<sup>25</sup>, that is separate from the agreement and separately acknowledged by the buyer<sup>26</sup>, and that includes the following information and disclosures, as applicable:

- The name, address, telephone number, and email address of the buyer or lessee.

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<sup>22</sup> This provision appears to apply to three solar farms, totaling 120 MW of capacity, planned for completion in 2017 at separate U.S. military properties within Gulf Power Company’s service territory. See Gulf Power Company 2017 Ten Year Site Plan, Apr. 3, 2017, at 71, available at <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2017/Gulf%20Power.pdf>.

<sup>23</sup> The bill defines a “seller” as “a person regularly engaged in, and whose business substantially consists of, selling or leasing goods, including distributed energy generation systems, to buyers or lessees.”

<sup>24</sup> The bill defines an “agreement” as “a contract executed between a buyer or lessee and a seller that leases or sells a distributed energy generation system,” including retail installment contracts. The bill defines a “retail installment contract” as “an agreement executed in this state between a buyer and a seller in which the title to, or a lien upon, a distributed energy generation system is retained or taken by the seller from the buyer as security, in whole or in part, for the buyer’s obligations to make specified payments over time.”

<sup>25</sup> For reference, the body of this bill analysis is prepared in 11-point type.

<sup>26</sup> The bill defines a “buyer” as “a person that enters into an agreement to buy a distributed energy generation system from a seller.” Further, the bill defines a “lessee” as “a person that enters into an agreement to lease or rent a distributed energy generation system.”

- The name, address, telephone number, email address, and valid state contractor license number of the person responsible for the installation of the distributed energy generation system.
- The name, address, telephone number, email address, and valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the system.
- A statement indicating whether the distributed energy generation system is being purchased or leased.
  - If the system will be leased, the written statement must include a disclosure substantially in the following form: "You are entering into an agreement to lease a solar electricity generating system. You will lease (not own) the system installed on your property."
  - If the system will be purchased, the written statement must include a disclosure substantially in the following form: "You are entering into an agreement to purchase a solar electricity generating system. You will own (not lease) the system installed on your property."
- The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.
- A payment schedule, including any amounts owed at contract signing, at the commencement of installation, at the completion of installation, and any final payments. If the distributed energy generation system is being leased, the written statement must include the frequency and amount of each payment due under the lease and the total estimated lease payments over the term of the lease.
- Each state or federal tax incentive or rebate, if any, relied upon by the seller in determining the price of the distributed energy generation system.
- A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: "It is important to understand that future utility electricity rates are estimates only. Your future utility rates and utility rate changes may vary."
- A description of any one-time or recurring fees, including but not limited to the circumstances triggering any late fees, estimated system removal fees, maintenance fees, Internet connection fees, and automated clearing house fees.
- A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing arrangement, contact your finance provider before signing a contract."
- A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing arrangement, contact your finance provider before signing a contract."
- A provision notifying the buyer or lessee of the right to rescind the agreement for a period ending not less than three business days after the agreement is signed. This requirement does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or where the developer has incorporated solar technology for purposes of meeting the Florida Building Code.
- A description of the distributed energy generation system design assumptions, including the make and model of its major components, system size, estimated first-year production, and estimated annual system production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. If the

seller is providing a warranty or guarantee of the energy production output of the distributed energy generation system, then the seller may provide a description of the warranty or guarantee in lieu of a description of the system design and components.

- A description of any performance or production guarantees.
- A description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.
- A statement in substantially the following form: "You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system."
- The approximate start and completion dates for installation.
- A disclosure as to whether system maintenance and repairs are included in the system purchase price.
- A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: "Your contract may be assigned, sold, or transferred without your consent to a third party that will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests."
- If the system is being purchased, a disclosure notifying the buyer of the requirements for interconnecting the system to the utility system.
- A disclosure notifying the buyer or lessee of the party responsible for obtaining interconnection approval.
- A description of any roof warranties.
- A disclosure notifying the lessee whether the seller will insure a leased distributed energy generation system against damage or loss and, if applicable, the circumstances under which the seller will not insure the system against damage or loss.
- A statement, if applicable, in substantially the following form: "You are responsible for obtaining insurance policies or coverage for any loss of or damage to the system. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system."
- A disclosure notifying the buyer or lessee whether the seller will place a lien on the buyer or lessee's home or other property as a result of entering into a purchase or lease agreement for the distributed energy generation system.
- A disclosure notifying the buyer or lessee whether the seller will file a fixture filing or a State of Florida Uniform Commercial Code Financing Statement Form (UCC-1)<sup>27</sup> on the distributed energy generation system.
- A disclosure identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.
- A disclosure as to whether the lease agreement may be transferred to a purchaser upon sale of the home or real property to which the system is affixed, and any conditions for such a transfer.
- A section where the seller may provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

The bill provides that electronic delivery of this written disclosure statement will be deemed acceptable if the intended recipient acknowledges receipt of the electronic document. Further, the bill provides that an electronic document will satisfy the required font and formatting standards if the format and the

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<sup>27</sup> The proper filing of a UCC-1 financing statement or a fixture filing would establish a security interest in the distributed energy generation system. A UCC-1 financing statement is a legal form that a creditor files to give notice that it has or may have an interest in the personal property of a debtor. A "fixture filing" is a financing statement covering goods that are, or are to become, fixtures. s. 679.1021(1)(nn), F.S. "Fixtures" are defined in s. 679.1021(oo), F.S., as "goods that have become so related to particular real property that an interest in them arises under real property law."

relative size of characters of the electronic document are “reasonably similar” to those required in the written document or if the information is otherwise displayed in a “reasonably conspicuous” manner.

The bill provides penalties for the willful and intentional violation of any of these provisions by a seller. Under the bill, such violations are noncriminal violations punishable by a fine not to exceed the cost of the distributed energy generation system involved in the transaction. In the event of such a violation, an owner<sup>28</sup> may recover, or may set off or counterclaim in any action against the owner by the violator, an amount equal to any finance charges and fees charged to the owner under the agreement, plus attorney fees and costs.

The bill provides an exemption from the disclosure requirements for a person or company, acting through its officers, employees, brokers, or agents, that markets, sells, solicits, negotiates, or enters into an agreement for a distributed energy generation system as part of a transaction involving the sale or transfer of real property to which the system is or will be affixed. Further, the bill provides an exemption for a transaction involving the sale or transfer of real property on which a system is located. Thus, the disclosure requirements do not appear to apply to sellers of new or existing homes, including real estate brokers and agents.

The bill also provides exemptions for the following:

- A third party, including a local government, that enters into an agreement for the financing of a distributed energy generation system.
- Sales or leases of systems to be installed on nonresidential properties.
- Sales of systems where payment is made in full no later than the date of installation by the seller or delivery from the seller to the buyer or a third party for installation.
- Persons, other than a seller or lessor, who install these systems.

The bill requires the Department of Business and Professional Regulation (DBPR) to adopt rules to implement and enforce these provisions. The bill further requires that DBPR, by January 1, 2018, publish standard disclosure forms that sellers may use to comply with the disclosure requirements in the bill.

The bill amends various provisions of law to conform cross-references.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

The provisions of the bill that implement Amendment 4 do not appear to impact state government revenues, though the Revenue Estimating Conference has not estimated the impacts of the bill that passed. The remaining provisions of the bill appear to have no impact on state government revenues.

#### **2. Expenditures:**

The bill requires DBPR to adopt rules implementing and enforcing the consumer protection provisions of the bill, including standard disclosure forms, thus requiring the expenditure of agency resources.

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<sup>28</sup> The bill does not define “owner.” The term appears to refer either to the owner of a property to which a distributed energy generation system is affixed or to the owner of such a system.



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

1. Revenues:

The provisions of the bill that implement Amendment 4 will have a negative impact on local government revenues. The Revenue Estimating Conference has not estimated these revenue impacts for the bill that passed. The remaining provisions of the bill appear to have no impact on local government revenues or expenditures.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The provisions of the bill that implement Amendment 4 may result in lower ad valorem taxes and lower overall energy costs for taxpayers who make qualifying improvements to real property. These provisions may stimulate sales and leases of renewable energy source devices and encourage the development of renewable energy device leasing businesses. These provisions will reduce taxes for electric utilities that install renewable energy devices to produce electricity.

**D. FISCAL COMMENTS:**

None.