

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SJR 136

INTRODUCER: Senator Steube

SUBJECT: Property Tax Exemption and Assessment/Manufacturing Equipment

DATE: November 13, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			AFT	
3.			AP	
4.			RC	

I. Summary:

SJR 136 authorizes the Legislature to exempt certain manufacturing equipment from the tangible personal property tax or allow the equipment to be assessed at less than its just value. If the Legislature allows the manufacturing equipment to be assessed at less than its just value, its assessed value must be determined by an accelerated depreciation method specified by law. The tax benefits may apply only to equipment that is used by a business primarily engaged in manufacturing.

The Revenue Estimating Conference has determined that the fiscal impact of the joint resolution, if the constitutional amendment passes and is implemented by the Legislature, could reduce local ad valorem tax revenues between \$215.5 million and \$842.6 million. This variance depends upon which industries are included in the bill and whether manufacturing equipment will be exempted from ad valorem taxation or assessed at less than just value.

II. Present Situation:

Amending the State Constitution by Joint Resolution

The State Constitution may be amended by one of five methods.¹ When an amendment is proposed by a joint resolution of the Legislature, it must be agreed to by three-fifths of the membership of the Senate and House of Representatives. Unless expedited by the Legislature, the joint resolution is then submitted to the electors at the next general election. If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the amendment, it becomes effective on the first Tuesday after the first Monday in January following the election, unless otherwise specified in the amendment.

¹ FLA. CONST. art XI, ss. 1-6. The options include amendment or revision by the Legislature, Constitution Revision Commission, Initiative by the people, Constitutional Convention, or the Taxation and Budget Reform Commission.

Constitutional Prohibitions Involving Taxes

The State Constitution prohibits the Legislature from granting property tax exemptions unless the exemptions are authorized in the Constitution. The Constitution also limits the Legislature's authority to exempt property or provide for property valuations at less than just value, unless expressly authorized.² Accordingly, the State Constitution must be amended if the Legislature intends to grant ad valorem tax exemptions or assessment benefits for manufacturing equipment.

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. It may not be levied by the state, however, because the State Constitution prohibits the state from levying ad valorem taxes on real estate or tangible personal property.³

The ad valorem tax is based on the taxable value of property as of January 1 of each year.⁴ The property appraiser annually determines the "just value"⁵ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."⁶ Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁷ however, the State Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;⁸ land used for conservation purposes;⁹ historic properties when authorized by the county or municipality;¹⁰ and certain working waterfront property.¹¹

² FLA. CONST. art. VII, s. 4.

³ FLA. CONST. art. VII, s. 1(a).

⁴ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

⁵ Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁶ *See* s. 192.001(2) and (16), F.S.

⁷ Section 193.011(2), F.S.

⁸ FLA. CONST. art. VII, s. 4(a).

⁹ FLA. CONST. art. VII, s. 4(b).

¹⁰ FLA. CONST. art. VII, s. 4(e).

¹¹ FLA. CONST. art. VII, s. 4(j).

Property Tax Exemptions

The Legislature may grant property tax exemptions only if they are authorized in the State Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹²

Manufacturing Industry in Florida

According to Enterprise Florida, Inc., this state ranks among the top 10 states in the nation for manufacturing.¹³ Florida is home to more than 19,000 manufacturing companies that employ more than 331,000 employees.¹⁴ These companies produce a variety of manufactured goods that include aerospace products, batteries, boats, communications equipment, food and beverages, pharmaceuticals, semiconductors, and more.¹⁵

Industrial Manufacturing and Equipment Sales Tax Exemption

Since April 30, 2014, the state has provided a sales and use tax exemption for manufacturers. The exemption is limited to industrial machinery and equipment that is purchased by an eligible manufacturing business.¹⁶ The machinery or equipment must be used at a fixed location in this state.

Eligible businesses are those classified in the North American Industry Classification System (NAICS) under codes 31, 32, or 33. Manufacturing establishments classified under these codes include food, apparel, wood, paper, printing, chemical, pharmaceutical, plastic, rubber, metal, transportation, and furniture manufacturing.¹⁷ For the purposes of the exemption, “industrial machinery and equipment” means tangible personal property that has a depreciable life of 3 or more years and is used in the manufacturing, processing, compounding, or production of tangible personal property for sale.¹⁸

The term “industrial machinery and equipment” also includes parts and accessories that are purchased prior to the industrial machinery and equipment being placed in service.¹⁹

Accelerated Depreciation

The term “accelerated depreciation” is not defined in the Florida Statutes. However, it is generally understood to mean a method of depreciation in which an asset loses its value at a

¹²*Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

¹³ Enterprise Florida, Inc., *Why Florida?*, available at <http://www.enterpriseflorida.com/wp-content/uploads/brief-manufacturing-florida.pdf> (last visited Nov. 6, 2016).

¹⁴ Enterprise Florida, Inc., *Manufacturing Excellence*, available at <https://www.enterpriseflorida.com/industries/manufacturing/> (last visited Nov. 6, 2017).

¹⁵ See *supra* note 13.

¹⁶ Section 212.08(7)(jjj), F.S.

¹⁷ The Manufacturers Association of Florida has provided a complete list of the manufacturing sectors that are classified under the relevant NAICS codes, available at https://c.ymcdn.com/sites/maf.site-ym.com/resource/resmgr/Docs/NAICS_Codes.pdf (last visited Nov. 7, 2017).

¹⁸ Section 212.08(5)(b)6.a., F.S.

¹⁹ Section 212.08(7)(jjj)2.e., F.S.

faster rate than if it were depreciated using a traditional method. As such, larger depreciation deductions are taken in the early years of the life of an asset, rather than the later years, which minimizes taxes in the early years.²⁰

III. Effect of Proposed Changes:

This constitutional amendment, if approved by the voters at the general election in November 2018, authorizes the Legislature to either exempt certain manufacturing equipment from the tangible personal property tax or permit the equipment to be assessed at less than its just value. If the Legislature allows the equipment to be assessed at less than just value, its value for tax purposes must be determined by an accelerated depreciation method authorized by law. The tax benefits apply only to equipment that is used by a business primarily engaged in manufacturing.

The amendment takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference on October 13, 2017, described the fiscal impact of this joint resolution as follows:

The Conference adopted a zero/negative indeterminate impact since this is a joint resolution proposing an amendment to be submitted to the voters. If voters do not approve the constitutional amendment, the impact is zero. If the constitutional amendment passes and the legislature chooses to implement it by limiting the tax benefit only to traditional manufacturing NAICS codes (31 through 33), the impact in FY 2019-20, using 2016 millage rates, is estimated to be reductions of (\$131.2m) against Non-school and (\$84.3m) against School Ad Valorem revenues. However, the impact will be larger should the Legislature decide to also include other industries in the implementing bill. For instance, including utilities

²⁰ See, for example, BLACK'S LAW DICTIONARY (10th ed. 2014), RICHARD A. WESTIN, WG&L TAX DICTIONARY 3 (2002), and InvestingAnswers available at <http://www.investinganswers.com/financial-dictionary/financial-statement-analysis/accelerated-depreciation-2234>.

(NAICS code 22) will increase the reductions by an additional (\$513.0m) against Non-school and (\$329.6m) against School Ad Valorem revenues.²¹

B. Private Sector Impact:

If approved by the electors and implemented by the Legislature, the joint resolution will reduce property taxes for certain manufacturers. The value of the tax benefits will be dependent upon how the Legislature implements the amendment and how broadly or narrowly the Legislature defines what businesses are primarily engaged in manufacturing. The tax benefits, however, may encourage more manufacturing activity and the creation of more manufacturing jobs.

C. Government Sector Impact:

The joint resolution does not appear to require any additional expenditures by state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If this proposed amendment is approved by the voters and implemented by the Legislature, implementing legislation will need to define “manufacturing equipment” and possibly specify a method of “accelerated depreciation,” which must be used to value manufacturing equipment for tax purposes.

VIII. Statutes Affected:

This resolution amends Article VII, section 4 and creates an undesignated section in Article XII of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²¹ Florida Revenue Estimating Conference, *SJR 136 Manufacturing Equipment* (Oct. 13, 2017) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page64-68.pdf> (last visited Nov. 6, 2017).