

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 769 Assessment of Renewable Energy Source Devices
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Bankson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N, As CS	Phelps	Keating
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution authorizes local governments to impose ad valorem taxes on real property and tangible personal property and to assess such property for tax purposes. The Florida Constitution also authorizes the Legislature to implement limitations and exemptions to ad valorem taxes. Specifically, the Constitution authorizes the Legislature to implement limitations and exemptions to ad valorem taxes for the assessment of solar or renewable energy source devices in determining the assessed value of real property and tangible personal property.

The Legislature has implemented this authority by prohibiting a property appraiser who is determining the assessed value of real property from considering any increase in the just value of residential property attributable to the installation of a renewable energy source device, or 80 percent of the just value of non-residential property attributable to the installation of a renewable energy source device. Current law also provides an ad valorem tax assessment limitation of 80 percent of the assessed value of a renewable energy source device that is considered tangible personal property.

The bill expands the ad valorem tax assessment limitation for solar and renewable energy source devices to include infrastructure and equipment used in the collection, transmission, storage, or usage of energy derived from biogas for conversion into renewable natural gas. In order to qualify for the ad valorem tax exemption, the equipment must convert biogas into renewable natural gas suitable for pipeline injection.

The bill does not appear to impact state government revenues or state or local government expenditures. The Revenue Estimating Conference estimated that the bill will have a recurring impact on local government revenues of -\$1.3 million in fiscal year 2024-25 (-\$0.5 million school taxes; -\$0.8 million non-school taxes).

The bill takes effect upon becoming law.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Constitution authorizes local governments to impose ad valorem taxes on real property and tangible personal property¹ and to assess such property for tax purposes.² 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.³ The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes.⁴ 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.⁵

The Florida Constitution also provides for specified assessment limitations, property classifications, and exemptions for ad valorem taxes.⁶ Among the limitations and exemptions is authorization for the Legislature to:

- Prohibit a property appraiser from considering the installation of a solar or renewable energy source device in determining the assessed value of real property for the purpose of ad valorem taxation;⁷ and
- Exempt from ad valorem taxation the assessed value of such devices subject to tangible personal property tax.⁸

The Legislature has passed laws implementing this authority as discussed below.⁹

Limitations on Assessment of Real Property

Current law prohibits a property appraiser who is determining the assessed value of real property from considering any increase in the just value of residential property or 80 percent of the just value of non-residential property attributable to the installation of a renewable energy source device.¹⁰ This law applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property, and to a renewable energy source device installed on or after January 1, 2018, to all other real property.¹¹ 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:

- Solar energy collectors, photovoltaic modules, and inverters;
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks;

¹ Fla. Const. art. VII, s.9.

² Fla. Const. art. VII, s.4.

³ 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.

⁴ Fla. Const. art. VII, s. 4.

⁵ S. 193.011, F.S. See also, *Walter v. Shuler*, 176 So. 2d 81, 85-86 (Fla. 1965).

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

⁷ Fla. Const. art. VII, s.4(i)2.

⁸ Fla. Const. art. VII, s.3(e)2.

⁹ See s. 193.624, F.S. (prohibiting the assessment of solar or renewable energy source device in determining the value of real property); s. 196.182, F.S. (exempting eighty percent of the assessed value of a renewable energy source device that is considered TPP).

¹⁰ S. 193.624(2), F.S.

¹¹ S. 193.624(3), F.S.

- 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.¹²

Limitations on Assessment of Tangible Personal Property

Tangible personal property (TPP) taxes apply to persons conducting business operations. Anyone who owns TPP and has a proprietorship, partnership, corporation, who leases, lends, or rents property, or who is a self-employed agent or contractor, must file a TPP return to the property appraiser by April 1 each year.¹³ Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value.¹⁴ A single return must be filed for each site in the county where the owner of tangible personal property transacts business.¹⁵

Current law provides an ad valorem tax assessment limitation of 80 percent of the assessed value of a renewable energy source device that is considered TPP, so long as the renewable energy source device¹⁶:

- 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; 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 specified megawatts of power.

This assessment limitation does not apply to a renewable energy source device installed as part of a project planned for a location in a fiscally constrained county.¹⁷

Biogas and Renewable Natural Gas

Renewable Natural Gas (RNG) is biogas¹⁸ that has been upgraded or refined for use in place of fossil natural gas. Under Florida Law, RNG is defined as “anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as

¹² S. 193.624(1), F.S.

¹³ S. 193.062, F.S.; see also FLA. DEP’T OF REVENUE, *Tangible Personal Property*, https://floridarevenue.com/property/Pages/Taxpayers_TangiblePersonalProperty.aspx (last visited Jan. 18, 2024).

¹⁴ S. 196.183(1), F.S.

¹⁵ S. 196.183(1), F.S.

¹⁶ S. 196.182(1), F.S.

¹⁷ S. 196.182(2), F.S. Section 218.67(1), F.S. defines a fiscally constrained county as a county entirely within a rural area of opportunity designated by the Governor or a county for which the value of a mill will raise no more than \$5 million in revenue.

¹⁸ Section 366.91(2)(a), F.S. defines biogas as “a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.”

a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.”¹⁹

Sources of biogas that are later refined to produce RNG include organic waste from food, agriculture, wastewater treatment and landfills.²⁰ In order to complete the process of converting biogas into RNG, facilities capture the biogas, “clean” it to pipeline standards, and then inject it into the pipeline for customer use.²¹ At least three facilities in Florida are converting biogas into RNG,²² with more in development.²³

Effect of Proposed Changes

The bill expands the ad valorem tax assessment limitations for solar and renewable energy source devices to include facilities used to capture and convert biogas to RNG. Specifically, it expands the definition of “renewable energy source device” to include equipment that collects, transmits, stores or uses energy derived from biogas. Under the bill, such equipment includes pipes, equipment, structural facilities, structural support, interconnection, and any other machinery used in the production storage, compression, transportation, processing, and conversion of biogas from landfill waste, livestock farm waste, including manure, food waste, or treated wastewater into renewable natural gas suitable for pipeline injection.

The bill clarifies that equipment on the distribution or transmission side of the point at which a renewable energy source device is interconnected to a natural gas pipeline or distribution system is not a renewable energy source device

The expanded limitations appear to affect existing facilities and facilities under construction, along with future facilities.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.624, F.S., relating to renewable energy source devices.

Section 2. Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁹ S. 366.91(2)(f), F.S.; *see also* s. 212.08(5)(v)1., F.S.

²⁰ U.S. Environmental Protection Agency, *An Overview of Renewable Natural Gas from Biogas*, available at https://www.epa.gov/sites/default/files/2020-07/documents/lmop_rng_document.pdf (last visited Jan. 16, 2024).

²¹ Presentation on Florida’s Energy Future (Liquefied Natural Gas, Renewable Natural Gas, and Small Modular Reactors), Tampa Electric Company (Dec. 6, 2023), slide 5, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3226&Session=2024&DocumentType=Meeting+Packets&FileName=ecc+12-6-23.pdf> (last visited Jan. 16, 2024).

²² *Id.* at slide 10, 12-16.

²³ Nasdaq, *Chesapeake Utilities Corporation to Develop its First RNG Facility in Florida* (Feb. 21, 2023), <https://www.nasdaq.com/press-release/chesapeake-utilities-corporation-to-develop-its-first-rng-facility-in-florida-2023-02> (last visited Jan. 16, 2024) (Chesapeake Utilities Corporation is installing a dairy manure renewable natural gas facility in Madison County, Florida).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have a recurring impact on local government revenues of -\$1.3 million in fiscal year 2024-25 (-\$0.5 million school taxes; -\$0.8 million non-school taxes).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lower ad valorem taxes for taxpayers who install RNG facilities may facilitate private capital investment into developing RNG production.

D. FISCAL COMMENTS:

None.

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. An exemption may apply if the fiscal impact is insignificant. 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that “structural facilities” used in the production, storage, compression, transportation, processing, and conversion of biogas into renewable natural gas are considered a renewable energy source device.
- Clarified that livestock farm waste used to produce biogas includes manure.

- Clarified that equipment on the distribution or transmission side of the point at which a renewable energy source device is interconnected to a natural gas pipeline or distribution system is not a renewable energy source device.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.