

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 531 Assessment of Residential and Nonhomestead Real Property
SPONSOR(S): Finance & Tax Committee, Energy & Utilities Subcommittee, Frishe, and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee	15 Y, 0 N	Gibson	Hoagland
3) Finance & Tax Committee	24 Y, 0 N, As CS	Aldridge	Langston
4) State Affairs Committee	13 Y, 0 N	Whittier	Hamby

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- Any change or improvement made for the purpose of improving the property's resistance to wind damage; or
- The installation of a renewable energy source device.

CS/CS/HB 531 implements the 2008 constitutional amendment. Specifically, the bill defines "changes or improvements made for the purpose of improving a property's resistance to wind damage" and "renewable energy source device." It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of changes or improvements made for the purpose of improving a property's resistance to wind damage or the installation and operation of a renewable energy source device. The bill specifies that the provision applies to new and existing construction.

Certain nonhomestead property is to be assessed at just value when it is "placed on the tax roll." The bill clarifies that the term "placed on the tax roll" means the year any property that, as of January 1, becomes eligible for assessment as nonhomestead property, and either becomes nonhomesteaded or has been combined or divided.

The bill clarifies provisions related to assessments of newly combined or divided parcels.

The Revenue Estimating Conference has not estimated the revenue impact of the reassessment provisions of the bill. However, the Revenue Estimating Conference has estimated that the other provisions of the bill will reduce local government ad valorem tax bases compared to current law levels. **Assuming current millage rates**, it was estimated that prohibiting the consideration of wind damage resistance improvements and the installation of a renewable energy source device would result in a school revenue reduction ranging from \$1.7 million in FY 2012-2013 to \$3.0 million in FY 2014-2015, and the loss in non-school revenue would range from \$2.4 million in FY 2012-2013 to \$4.3 million in FY 2014-2015.

This bill has an effective date of July 1, 2011, and would apply to assessments beginning on January 1, 2012.

This bill may be a mandate, requiring a two-thirds vote of the membership of each house. See the Mandates section of this analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), 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 approved a property tax exemption for real property on which a renewable energy source device¹ is installed and is being operated. 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 law required that the exemption could be no more than 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.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (chapter 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 Florida Constitution:

(i) The legislature, by general law and subject to conditions specified therein, may² 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 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 such

¹ Sections 196.175 and 196.012(14), F.S.

² The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

device is installed and operated. This repealed language had provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages.

Property Valuation

Article VII, section 4, of the Florida Constitution, provides that all property, with some exceptions, is to be assessed at “just value.” Florida courts define “just value” as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

“Assessed value of property”³ means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the “Save Our Homes” assessment limitation⁴ and the 10 percent cap on non-homestead property.⁵ In addition, “assessed value” is also the classified use value of agricultural or other special classes of property that are valued based on their current “classified” use rather than on market value.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when 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 any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, 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;
- (6) The condition of said property;
- (7) The income from said property; and

³ Section 192.001(2), F.S.

⁴ The “Save Our Homes” amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. See Article VII, section 4(d)(1), of the Florida Constitution.

⁵ On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

(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.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.⁶

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

Reassessment

The Ninth Judicial Circuit Court in Orange County decided a case in December 2010, where, as of January 1, 2008, a property owner owned and resided in a property as their homestead. During 2008, the property owner vacated the property, yet retained ownership of it. As of January 1, 2008, the Orange County Property Appraiser reclassified the property as nonhomestead residential and reassessed the property at full market value. The court found that the 10% assessment cap⁷ on nonhomestead property applied in this instance to the previous assessment (without a reassessment at just value).

2009 Senate Interim Report

During the 2009 interim, staff for the Senate Committee on Finance and Tax issued an interim report on the 2008 Constitutional Amendment and how the provision can be implemented.⁸ This report included information about property tax incentives provided by other states⁹ for installing renewable energy equipment or improving disaster resistance.

According to the report, the following states have enacted property tax incentives for renewable energy equipment:¹⁰

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;

⁶ The Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

⁷ Sections 193.1554(3) and 193.1555(3), F.S.

⁸ *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, the Florida Senate, Committee on Finance and Tax, Interim Report 2010-116, October 2009.

⁹ *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

¹⁰ This list does not include incentives for public utilities.

- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;
- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to: use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20 year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;
- New York provides a 15-year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system, and buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;
- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;
- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;
- Virginia allows a local option exemption or partial exemption for solar energy equipment; and
- Wisconsin exempts solar and wind energy systems.

According to the report, the following states have enacted property tax incentives for improvements dealing with disaster preparedness:

- California does consider the construction or installation in existing buildings of seismic retrofitting improvements or earthquake hazard mitigation technology as new construction, contingent upon the property owner filing required documents;

- California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;
- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and
- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.

Effect of the Proposed Changes

Renewable Energy Source Devices and Resistance to Wind Damage

This bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the just value of the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
 - Improving the strength of the roof deck attachment.
 - Creating a secondary water barrier to prevent water intrusion.
 - Installing wind-resistant shingles.
 - Installing gable-end bracing.
 - Reinforcing roof-to-wall connections.
 - Installing storm shutters.
 - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment which 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, conventional backup systems of any type are not included in this definition.
 - 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.

This bill provides that residential real property may not be assessed for changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device if an application is filed with the property appraiser on or before March 1 of the first year the property owner claims the assessment.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

This bill repeals the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

Reassessment

Certain nonhomestead property is to be assessed at just value when it is "placed on the tax roll."¹¹ The bill clarifies that the term "placed on the tax roll" means the year that any property, as of January 1, becomes eligible for assessment as nonhomestead property, and either becomes nonhomesteaded or has been combined or divided.

The bill also clarifies that any property that is combined or divided after January 1, and that is included as a combined or divided parcel on the tax notice will receive any current assessment limitation on the newly combined parcel(s) or apportioned among the newly created parcel(s) and will not be considered combined or divided for purposes of this section until the following January 1 when it will be considered placed on the tax roll as a combined or divided parcel(s).

B. SECTION DIRECTORY:

Section 1. Amends s. 193.114(4), F.S., relating to preparation of assessment rolls.

Section 2. Creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

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

Section 4. Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 5. Amends ss. 193.1555(1) and (7), F.S., relating to the assessment of certain residential and nonresidential real property.

Section 6. Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 7. Amends s. 196.121, F.S., amending a cross-reference.

Section 8. Amends s. 196.1995, F.S., amending cross-references.

Section 9. Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 10. Provides an effective date of July 1, 2011, and applies to assessments beginning on January 1, 2012.

¹¹ Section 193.1554(2) and 193.1555(2), F.S.

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:

The Revenue Estimating Conference has not estimated the revenue impact of the reassessment provisions of the bill. However, the Revenue Estimating Conference has estimated that the other provisions of the bill will reduce local government ad valorem tax bases compared to current law levels. **Assuming current millage rates**, the following impacts were estimated:

Wind Damage	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$1.7 m)	(\$0.8 m)	(\$1.0 m)	(\$1.2 m)
Non-School Impact	\$0	(\$2.4 m)	(\$1.1 m)	(\$1.4 m)	(\$1.7 m)
Total Impact	\$0	(\$4.1 m)	(\$1.9 m)	(\$2.4 m)	(\$2.9 m)

Renewable Energy Devices	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$3.1 m)	(\$0.9 m)	(\$1.3 m)	(\$1.8 m)
Non-School Impact	\$0	(\$4.4 m)	(\$1.3 m)	(\$1.9 m)	(\$2.6 m)
Total Impact	\$0	(\$7.5 m)	(\$2.2 m)	(\$3.2 m)	(\$4.4 m)

	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
Total Impact	\$0	(\$11.6 m)	(\$4.1 m)	(\$5.6 m)	(\$7.3 m)

2. Expenditures:

Property Appraisers may incur additional costs implementing the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in this bill may:

- Offer homebuilders and homebuyers incentives to construct or strengthen homes with improved wind resistance, or to equip homes with renewable energy source devices, if potential buyers begin to demand these features;
- Lead to a recurring tax benefit for homeowners;
- Result in lower insurance rates and energy costs for homeowners; and
- Encourage quicker adoption of building practices that take improved wind resistance into account.

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. This bill does not appear to qualify under any exemption or exception. 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.

Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Energy & Utilities Subcommittee adopted a technical amendment correcting two typographical errors in the bill. The bill was reported out as a Committee Substitute.

On April 5, 2011, the Finance and Tax Committee adopted two amendments that:

- Clarify that the term "placed on the tax roll" means the year any property as of January 1, that becomes eligible for assessment as nonhomestead property, and either becomes a nonhomesteaded or property has been combined or divided.
- Clarify provisions related to assessments of newly combined or divided parcels.

The analysis has been updated to reflect the committee substitute.