

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment

SPONSOR(S): Regulatory Affairs Committee, Rodrigues, Berman, and others

TIED BILLS: CS/HB 195 **IDEN./SIM. BILLS:** CS/SJR 170

| 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

The Florida Constitution (Constitution) provides for local government ad valorem taxes on real property and tangible personal property, assessment of property for tax purposes, and exemptions to these taxes.

Article VII, section 4(i) of the Constitution provides that 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.

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device from ad valorem tax on tangible personal property.

The second amendment authorizes the Legislature to prohibit, by general law, a property appraiser from considering the installation of a renewable energy source device in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by including all real property, not just real property used for residential purposes. This 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.

The Revenue Estimating Conference (REC) estimates the impact of the joint resolution to be either zero or negative indeterminate because it is subject to further approval or rejection by the voters. However, if the joint resolution is approved by the voters, there will be an impact from the provisions related to tangible personal property, which need no further implementing language. The REC estimates the impact 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 joint resolution provides a schedule of implementation. Under this schedule, the proposed amendments would take effect on January 1, 2017, and expire on December 31, 2036.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

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

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)

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).

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., article VII, s. 3.

¹¹ s. 196.183(1), F.S.

¹² s. 196.183(3), F.S.

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 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.

¹³ Ch. 80-163, Laws of Fla.

¹⁴ *Id.*

¹⁵ Ch. 2008-227, Laws of Fla.

¹⁶ Ch. 2013-77, Laws of Fla.

Under current law, the renewable energy property tax exemption is implemented in s. 193.624, F.S. The statute applies to a renewable energy source device installed on or after January 1, 2013, on new and existing residential real property. 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:¹⁷

- 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.

Effect of Proposed Changes

The joint resolution proposes two amendments to the Florida Constitution. The first amendment proposes an amendment to article VII, section 3 to exempt the assessed value of a renewable energy source device from the ad valorem tax on tangible personal property.

The second amendment proposes an amendment to article VII, section 4 that authorizes the Legislature, by general law, to prohibit a property appraiser from considering the installation of a renewable energy source device in the determination of assessed value of real property for the purpose of ad valorem taxation. This expands the current constitutional provision by including all real property, not just real property used for residential purposes. This 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.

The joint resolution also creates section 34 of article XII to provide a schedule of implementation. Under this schedule, the proposed amendments would take effect on January 1, 2017, and expire on December 31, 2036.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing constitutional amendments, it does not contain bill sections.

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 joint resolution 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 joint resolution to be either zero or negative indeterminate because it is subject to further approval or rejection by the voters. However, if the joint resolution is approved by the voters, there will be an impact from the provisions related to tangible personal property, which need no further implementing language. The REC estimates the impact 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

Article XI, section 1 of the Florida Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: Proposal by legislature. – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, section 5(e) of the Florida Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the Florida Constitution on the first Tuesday after the first Monday in January following the election.¹⁸

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 joint resolution favorably as a committee substitute. The strike-all amendment:

- Removed the phrase “or a component thereof” from references to “renewable energy source device.”
- Provided an expiration date of December 31, 2036, for the constitutional amendments proposed by the joint resolution.

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

¹⁸ FLA. CONST. art. XI, s. 5(e).