HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Assessment of Residential Real Property
SPONSOR(S): Frishe
TIED BILLS: **IDEN./SIM. BILLS:** SB 1164, SB 1380, SB 1410, HB 7005

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Local Affairs Policy Committee		Noriega	Hoagland
2) Energy & Utilities Policy Committee			
3) Finance & Tax Council			
4)			
5)			

SUMMARY ANALYSIS

In the November 2008 General Election, Florida's voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission (Amendment #3). This amendment to Article VII, Section 4 (Taxation; assessments) authorizes 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.

This bill 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 devices" and provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider 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.

The Revenue Estimating Conference (REC) has not met to evaluate this bill. In 2009, the REC met to evaluate a similar proposal (HB 7113) and determined that HB 7113 would reduce local government revenues by $11.1 million in FY 2010-11, and that these reductions would increase to $28.5 million in FY 2013-14.

The bill has an effective date of July 1, 2010, and would first apply to assessments on January 1, 2011.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

<u>Present Situation</u>

<u>Background</u>
Article VII, s. 4 of the Florida Constitution, strictly limits the Legislature's authority to provide ad valorem tax exemptions or adjustments. This section 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.

Current law requires property appraisers to establish the just value of every parcel of real property as of January 1 each year. In order to establish just value, s. 193.011 (8), F.S., instructs property appraisers to exclude the following from consideration of the net proceeds of a sale:

- closing costs;
- realtor fees; and
- the value items of tangible personal property that represent a part of the sales price.

Assessed value[1] is a term used to describe the value placed on a parcel after application of the "Save Our Homes" assessment limitation[2] and the 10 percent cap on non-homestead property.[3] 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.

<u>Renewable Energy Property Tax Exemptions</u>

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[1] Section 192.001(2), F.S., defines "assessed value."

[2] The popularly named "Save Our Homes" amendment to the State Constitution was approved by Florida's voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent.

[3] On January 29, 2008, Florida's voters approved a constitutional amendment that made changes to the constitutional provisions dealing with property taxation. 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.

Property tax incentives for renewable energy in Florida date back almost 30 years. In 1980, the following language was adopted as Section 3(d), Article VII, of the Florida Constitution:[4]

> 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.

Twice, in 1980 and 2008, the Legislature authorized property tax exemptions for real property on which a renewable energy source device is installed and is being operated. The 1980 law expired on December 31, 1990, as provided in the constitution. This provision was approved again in 2008 as part of that year's comprehensive energy bill, HB 7135 (ch. 2008-227, L.O.F.).

The 1980 law required that the exemption could not exceed 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.

The last of the renewable energy property tax exemptions approved by the Florida Constitution expired in December 2000.

During the 2008 Legislative Session, ch. 2008-227, L.O.F., was enacted and it removed the expiration date of the renewable energy property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. However, the period of each exemption remained at 10 years. Chapter law 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.

The present status of this portion of ch. 2008-227, L.O.F., is ambiguous. The constitutional provision on which it was based has been repealed, but the language is still part of Florida Statutes.[5] Chapter law differs from the recently-approved constitutional provision in that it provides an exemption for renewable energy devices instead of prohibiting their consideration in assessed value, and chapter law is not limited to property used for residential purposes.

<u>Wind Resistance Incentives</u>
Attempts to provide property tax incentives for improving structures' ability to withstand hurricanes began in 1999, with the introduction of two bills. SJR 124 would have authorized the Legislature to exempt, by general law, the value attributable to improvements made for purposes of disaster preparedness. In addition, SB 122 would have provided a statutory exemption for any increase in value attributable to the installation of shutters designed to protect the property against damage from hurricanes. Similar proposals were introduced in 2000 (SJR 138, HJR 1731), and in 2007 (SB 158). However, none of these bills introduced from 1999 to 2007 were passed by the Legislature.

<u>2008 Constitutional Amendment</u>

[4] Through SJR 15-E.

[5] On February 17, 2010, HB 7005 (Renewable Energy Property Tax Exemption) passed its second and final stop in the House of Representatives (Finance & Tax Council). HB 7005 repeals the renewable energy source device property tax exemption from Florida Statutes.

In the November 2008 general election, the voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission (Amendment #3). This amendment added the following language to Article VII, Section 4 (Taxation; assessments):

(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.

This 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation to implement its provisions. In addition, this amendment repealed authority granted to the Legislature in 1980. The now-repealed authority not only allowed an exemption for a renewable energy source device and for real property on which such device is installed and operated, but also had provided the constitutional basis for the legislation passed in 1980 and 2008. Section 196.175, F.S., contains the exemption that was authorized by the now-repealed amendment.

<u>Property Appraisals</u>
Section 193.011, F.S., lists factors to be taken into consideration when determining just valuation. These factors include the following:

(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

(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.

<u>2009 Senate Interim Report and Incentives Provided by Other States</u>

During the 2009 interim, professional staff with the Senate Committee on Finance and Tax studied the implementation of the 2008 constitutional amendment and issued an interim report.[6]

This interim report included information about property tax incentives provided by other states[7] for installing renewable energy equipment or improving disaster resistance.

Several states have enacted property tax incentives for renewable energy equipment:

- 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;
- 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;

[6] 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.

[7] *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

- 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.

This list does not include incentives for public utilities.

Tax incentives for other kinds of improvements dealing with disaster preparedness are less common:

- California does not include 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.

<u>Review of Late-Filed Exemption Applications</u>
Section 196.011(1), F.S., requires persons with legal title to real or personal property who are entitled to an exemption to apply on or before March 1 of each year.

Section 196.011(8), F.S., provides that an applicant who is qualified to receive an exemption, but who misses the filing deadline, may file an application for the exemption and file a petition with the value adjustment board (VAB) requesting that the exemption be granted. The petition must be filed no later than 25 days after the Truth in Millage (TRIM) notice is mailed by the property appraiser pursuant to ss. 194.011(1)[8] and 200.069, F.S.[9] Upon reviewing the petition, if the applicant is qualified to receive the exemption and demonstrates particular extenuating circumstances to warrant granting the exemption, the property appraiser may grant the exemption. If the property appraiser denies the exemption, the applicant may file a petition with the VAB.

Effect of the Proposed Changes

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 following:

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[8] Subsection (1) of s. 194.011, F.S., provides that each taxpayer who is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069, F.S.

[9] Section 200.069, F.S., requires property appraisers to prepare and deliver a notice of proposed property taxes and non-ad valorem assessments to each taxpayer listed on the current year's assessment roll. This notice is commonly referred to as the TRIM notice, and is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments. In addition, s. 200.069, F.S., provides the specific elements and required content and format of the TRIM notice. DOR is responsible for reviewing TRIM notices to ensure compliance with statutory requirements.

- 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 hurricane-resistant shingles.
    - Installing gable-end bracing.
    - Reinforcing roof-to-wall connections.
    - Installing storm shutters.
    - Installing impact-resistant glazing.
    - Installing hurricane-resistant doors.
- 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.

<u>Review of Late-Filed Exemption Applications</u>
This bill provides that a parcel of residential property may not be assessed to change or improve its resistance to wind damage, or for the installation of a renewable energy source device unless an application is filed 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 be 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.

Consistent with current law, this bill provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the TRIM notice.

If the property appraiser denies the exemption, the applicant may file a petition with the VAB, pursuant to s. 194.011(3), F.S. In these cases, the applicant must pay a non-refundable fee of $15.00 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the VAB to warrant granting assessment under this section, the property appraiser shall calculate the assessment in accordance with the new section created by this bill (s. 193.624, F.S.).

<u>Renewable Energy-Related Repeals</u>
The 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 constitutional provision repealed by passage of the 2008 constitutional amendment. Several cross-references are amended.

B. SECTION DIRECTORY:

<u>Section 1</u>: Creates s. 193.624, F.S., relating to definitions and assessment of residential property.

<u>Section 2</u>: Amends s. 193.155, F.S., relating to homestead assessments.

<u>Section 3</u>: Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

<u>Section 4</u>: Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

<u>Section 5</u>: Amends s. 196.121, F.S., amending a cross-reference.

<u>Section 6</u>: Amends s. 196.1995, F.S., amending cross-references.

<u>Section 7</u>: Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

<u>Section 8</u>: Provides an effective date of July 1, 2010, and first applies to assessments on January 1, 2011.

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 (REC) has not met to evaluate this bill. In 2009, the REC met to evaluate a similar proposal (HB 7113) and determined that HB 7113 would reduce local government revenues by $11.1 million in FY 2010-11, and that these reductions would increase to $28.5 million in FY 2013-14.

2. Expenditures:

None.

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 mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. The bill does not appear to qualify for an exemption. Therefore, the bill must have a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Pinellas County Property Appraiser's Office (PCPAO) is a proponent of this bill because it believes that the bill will ensure inclusion of the value of the qualified improvements related to just/market value, and will deduct the value of the qualified improvements from the assessed value. According to the PCPAO, "while determining the just/market value of those improvements will not be easy, this method will accomplish the goals of the amendment and allow us to maintain accurate market values." Also, the PCPAO supports this proposal because it places an obligation on the property owner to apply for this reduction in value and to provide information concerning the cost of the improvements.

In addition, the PCPAO indicates that analysis of the bill language indicates that the value of improvements made to protect against wind damage and the value of renewable energy source devices are to be excluded from "assessed value" rather than "just value" of real property. This language choice also permits the application of s. 193.011, F.S., for the establishment of "just value" without distorting the resulting market or just valuation by eliminating the contribution of storm shutters, other protections from wind damage, and renewable energy source devices from the determination of market or just value. Instead, the amended language opens the door to an implementation strategy that will allow the reduction of value attributed to the covered devices to be deducted from just value during the calculation of assessed value.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES