

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

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BILL: CS/SB 90

INTRODUCER: Community Affairs Committee; Senators Brandes and Stewart

SUBJECT: Renewable Energy Source Devices

DATE: April 12, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Favorable</b>
2.	Present	Yeatman	CA	<b>Fav/CS</b>
3.	Fournier	Diez-Arguelles	AFT	<b>Recommend: Favorable</b>
4.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 90 provides property tax relief for owners of renewable energy source devices whether these devices are installed on residential or nonresidential real property or are taxed as tangible personal property.

The bill:

- Expands the definition of “renewable energy source device” to include various new devices, but excludes specified equipment that is involved in distribution and transmission of electricity;
- Expands the prohibition against considering the value of a renewable energy source device in determining the assessed value of real property used for residential purposes to all real property;
- Applies the prohibition to devices without regard to the date of installation, as opposed to the current prohibition, which only applies to devices that were installed (on residential property) on or after January 1, 2013; and
- Exempts renewable energy source devices from the tangible personal property tax.

These provisions expire December 31, 2037.

The Revenue Estimating Conference estimates that the bill reduces local ad valorem tax revenue by \$54.5 million on a recurring basis. Of that amount, \$21.3 million is a reduction in school

district revenue and \$33.2 million is a reduction in county, municipal, and special district revenue.

The bill takes effect January 1, 2018.

The bill may be a mandate requiring a two-thirds vote of the membership of the Senate. *See* Section IV. A. of the analysis.

## II. Present Situation:

### Ad Valorem Taxes

The State Constitution authorizes local government ad valorem taxes on real property and tangible personal property,<sup>1</sup> provides conditions and limitations upon the assessment of property for tax purposes,<sup>2</sup> and provides several ad valorem tax exemptions.<sup>3</sup>

### Assessment Limitation for Renewable Energy Source Devices

Among the assessment limitations is authorization for the Legislature to prohibit the consideration of the installation of a renewable energy source device in the determination of the assessed value of real property used for residential purposes.<sup>4</sup> The Legislature has implemented this prohibition in s. 193.624, F.S. The statute prohibits a property appraiser who is determining the assessed value of real property used for residential purposes from considering an increase in the just value of the property attributable to the installation of a renewable energy source device. The statute applies to a renewable energy source device installed on or after January 1, 2013, to 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:

- 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;

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<sup>1</sup> FLA. CONST. art. VII, s. 9.

<sup>2</sup> FLA. CONST. art. VII, s. 4.

<sup>3</sup> FLA. CONST. art. VII, s. 3.

<sup>4</sup> FLA. CONST. art. VII, s. 4(i).

- 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.

Under current law, a renewable energy source device owned and installed on non-residential real property by the owner of the real property becomes a part of that real property and is taxable as real property. If a device is owned by someone other than the owner of the real property where it is installed, the device remains separate and distinct from the real property and the owner of the device is subject to tangible personal property tax on the device.

### **Tangible Personal Property Tax**

“Tangible personal property” means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>5</sup> All tangible personal property is subject to ad valorem taxation unless expressly exempted.<sup>6</sup> Household goods and personal effects,<sup>7</sup> items of inventory,<sup>8</sup> and up to \$25,000 of assessed value for each tangible personal property tax return<sup>9</sup> are exempt from ad valorem taxation. Electric generating property owned by public utilities, including solar or renewable energy devices, is taxed as tangible personal property.<sup>10</sup>

### **Constitutional Amendment**

In August 2016, voters approved a constitutional amendment to expand the exemption discussed above for renewable energy devices to all property, not just residential property.<sup>11</sup> The amendment authorizes the Legislature to exempt the assessed value of a solar or renewable energy source device from the tangible personal property tax, subject to conditions and limitations specified by general law.<sup>12</sup> For a solar or renewable energy source device owned by the real property owner and taxed as real property, the amendment authorizes the Legislature to prohibit the consideration of the installation of a solar or renewable energy source device for the purpose of ad valorem taxation of all real property, subject to conditions, limitations, and reasonable definitions specified by general law.<sup>13</sup>

The amendment also creates a schedule of implementation.<sup>14</sup> The amendments to the State Constitution take effect January 1, 2018, and will expire December 31, 2037. Upon expiration,

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<sup>5</sup> Section 192.001(11)(d), F.S.

<sup>6</sup> Section 196.001(1), F.S.

<sup>7</sup> Section 196.181, F.S.

<sup>8</sup> Section 196.185, F.S.

<sup>9</sup> Section 196.183, F.S.

<sup>10</sup> Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results for CS/SB 90*, (March 3, 2017), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/\\_pdf/Impact0303.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0303.pdf) (last visited March 9, 2017).

<sup>11</sup> Florida Department of State Division of Elections, available at <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=93> (last visited April 10, 2017).

<sup>12</sup> FLA. CONST. art. VII, s. 3.

<sup>13</sup> FLA. CONST. art. VII, s. 4.

<sup>14</sup> FLA. CONST. art. XII, s. 34.

the schedule of implementation will be repealed and the text of the amended substantive sections will revert to that in existence on December 31, 2017. Any amendments to such text otherwise adopted are preserved and continue to operate to the extent that they are not dependent upon the portions of text which expire pursuant to the schedule.

### **III. Effect of Proposed Changes:**

The bill amends s. 193.624, F.S., to expand the definition of “renewable energy source device” to include:

- Wiring, structural supports, and other components used as integral parts of a system; and
- Power conditioning and storage devices that store or use solar or geothermal energy.

However, the term does not include any equipment or structure that would be required in the absence of the renewable energy source device or that is on the distribution or transmission side of the point of interconnection where a renewable energy source device is interconnected to an electric utility’s distribution grid or transmission lines.

The bill also expands the application of the existing prohibition against the consideration of renewable energy devices in determining the assessed value of real property. The prohibition currently applies to a device installed on or after January 1, 2013 on residential property only; the bill expands coverage to all real property, and it will apply without regard to when installation occurred.

These amendments expire December 31, 2037, and the text of the amended subsections reverts to that in existence on December 31, 2017. Any amendments to the text enacted other than by this bill shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device from tangible personal property tax. This new section expires December 31, 2037.

The bill reenacts ss. 193.155 and 193.1554, F.S., to incorporate the amendments made to s. 193.624, F.S.

The bill takes effect January 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.<sup>15,16,17</sup>

The mandates provision of section 18, Article VII of the Florida Constitution, may apply because the bill reduces local governments' authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that 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 implements a constitutional amendment adopted by Florida voters, the amendment was permissive and authorizes, but does not require, the Legislature to act.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates that the bill will reduce local ad valorem tax revenue by \$54.5 million on a recurring basis. Of that amount, \$21.3 million is a reduction in school district revenue and \$33.2 million is a reduction in county, municipal, and special district revenue. In Fiscal Year 2018-2019, the bill will reduce school district revenue by \$16.4 million and county, municipal, and special district revenue by \$25.5 million.<sup>18</sup>

**B. Private Sector Impact:**

The exemptions from the ad valorem tax on real property and tangible personal property tax will reduce taxes for electric utilities and other property owners that install renewable energy devices to produce electricity. The exemptions may stimulate sales and leases of renewable energy source devices and encourage the development of renewable energy device leasing businesses.

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<sup>15</sup> FLA. CONST. art. VII, s. 18(d).

<sup>16</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

<sup>17</sup> Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

<sup>18</sup> Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results for CS/SB 90*, (March 3, 2017), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/\\_pdf/Impact0303.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0303.pdf) (last visited March 9, 2017).

**C. Government Sector Impact:**

The bill applies to all renewable energy source devices, regardless of when they were installed, and thus, it applies to devices installed prior to the bill's effective date, January 1, 2018. Some local governments have pre-existing agreements with electric utilities that relied on the local governments receiving additional property tax revenue from the installation of renewable energy source devices; the effect of the bill on these local governments is uncertain, and depends on the provisions of any such agreement.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 193.624 of the Florida Statutes.

This bill creates section 196.182 of the Florida Statutes.

This bill re-enacts the following sections of the Florida Statutes: 193.155(4)(a) and 193.1554(6)(a).

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**CS by Community Affairs on February 21, 2017:**

Clarifies the definition of “renewable energy source device” by removing duplicative language and providing that the term does not include equipment involved in the distribution or transmission side of the point of interconnection where a renewable energy source device is interconnected to an electric utility's grid or transmission lines.

**B. Amendments:**

None.