

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 90

INTRODUCER: Senator Brandes

SUBJECT: Renewable Energy Source Devices

DATE: February 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Present	Yeatman	CA	Pre-meeting
3.			AFT	
4.			AP	

I. Summary:

SB 90 expands the current prohibition against the consideration of a renewable energy source device in determining the assessed value of real property. Specifically, the bill:

- Expands the definition of “renewable energy source device” to include various new devices;
- Expands the prohibition on including a renewable energy source device in a real property tax assessment from only real property used for residential purposes to all real property; and
- 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 or after January 1, 2013.

These amendments expire December 31, 2037, and the text of the amended subsections reverts to that in existence on December 31, 2017, with stated exceptions.

The bill also exempts a renewable energy source device from the tangible personal property tax. This new section expires December 31, 2037.

The bill takes effect January 1, 2018.

II. Present Situation:

Ad Valorem Taxes

The State Constitution authorizes local government ad valorem taxes on real property and tangible personal property,¹ provides conditions and limitations upon the assessment of property

¹ FLA. CONST. art. VII, s. 9.

for tax purposes,² and provides several ad valorem tax exemptions.³ Among the exemptions 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.⁴

Exemption for Renewable Energy Source Devices

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;
- 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.

Constitutional Amendment

During the 2016 primary election, voters approved a constitutional amendment to expand the exemption discussed above. The amendment authorizes the Legislature to prevent ad valorem

² FLA. CONST. art. VII, s. 4.

³ FLA. CONST. art. VII, s. 3.

⁴ FLA. CONST. art. VII, s. 4(i).

taxation of a solar or renewable energy source device whether it is owned by the owner of the real property on which it is installed or by another person. For a solar or renewable energy source device taxed as tangible personal property, 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, limitations, and reasonable definitions specified by general law.⁵ 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 real property.⁶

The amendment also creates a schedule of implementation.⁷ The amendments to the State Constitution take effect January 1, 2018, and will expire December 31, 2037. Upon expiration, 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.

Tangible Personal Property Tax

Tangible personal property is everything other than real estate, which is used in a business or rental property. Examples of tangible personal property are computers, furniture, tools, machinery, signs, equipment, leasehold improvements, supplies, and leased equipment.⁸

Every new business owning tangible personal property on January 1 must file an initial tax return.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 Owners of tangible personal property are required to file tax returns in the county where the property is located, and the owner of tangible personal property must file a separate return for each site in the county where he or she transacts business.¹¹ Owners of tangible personal property do not need to file an annual tangible personal property return after their initial filing if the initial application for exemption is accepted, and the value of the tangible personal property is less than \$25,000.¹² However, for any year in which the assessed value of the tangible personal property exceeds \$25,000, the owner of the tangible personal property must still file a return.

The taxable value of tangible personal property tax is the just value (fair market value) of the property adjusted for any exclusions, differentials, or exemptions allowed by the Constitution and the Florida Statutes. The Constitution strictly limits the Legislature's authority to provide

⁵ FLA. CONST. art. VII, s. 3.

⁶ FLA. CONST. art. VII, s. 4.

⁷ FLA. CONST. art. XII, s. 34.

⁸ Section 192.001, F.S.

⁹ Section 193.062, F.S.; See also Department of Revenue, Tangible Personal Property, *available at* <http://dor.myflorida.com/dor/property/tpp/> (last visited Feb. 14, 2017).

¹⁰ FLA. CONST. art. VII, s. 3.

¹¹ Section 196.183(1), F.S.

¹² Section 196.183(3), F.S.

exemptions or adjustments to fair market value.¹³ The tax rate is the same millage rate levied by counties, cities, school districts, and special districts on real property.

Based on preliminary data for 2016, the tangible personal property tax comprised \$1.969 billion in taxes levied statewide.¹⁴ Tangible personal property makes up approximately 7 percent of the total taxes levied in Florida.¹⁵ Additionally, certain small and rural counties rely heavily upon the tangible personal property tax. The tangible personal property tax makes up 49.3 percent of the total taxes levied in Hardee County; 36.9 percent of the total taxes levied in Liberty County; 41.3 percent of the total taxes levied in Taylor County; and 49.9 percent of the total taxes levied in Hamilton County.¹⁶

III. Effect of Proposed Changes:

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

- Power conditioning and storage devices in the context of solar energy equipment;
- 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.

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. First, the prohibition currently applies to residential property only; the bill expands coverage to all real property. Second, the prohibition currently applies only to a device installed on or after January 1, 2013; under the bill, 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 act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.

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.

¹³ FLA. CONST. art. VII, s. 4.

¹⁴ This figure was derived by multiplying an assumed 17.7796 statewide aggregate millage rate by the estimated 2016 tangible personal property total value of \$110.7 billion and dividing by 1,000. Tangible personal property related to centrally accessed railroads and private carlines is not included in this calculation.

¹⁵ Department of Revenue, Distribution of Taxes Levied by Property Type for County and Municipal Governments, Fiscal Year 2016-17, available at ftp://sdrftp03.dor.state.fl.us/County_Municipal_Data/16table2/all_counties_table2.pdf. (Last visited Feb. 15, 2017).

¹⁶ *Id.*

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 mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{17,18,19} The Revenue Estimating Conference has not examined the fiscal impact of this bill. However, it appears likely that the bill will exceed the \$2 million threshold.

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill reduces local government 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 would be implementing constitutional amendments adopted by Florida voters, the amendments were permissive and only authorize, and do not require, the Legislature to act.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The exemptions will have a negative impact on local government revenues, which the Revenue Estimating Conference has not yet determined.

¹⁷ FLA. CONST. art. VII, s. 18(d).

¹⁸ 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).

¹⁹ 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).

B. Private Sector Impact:

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

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. The bill also appears to apply to electric utilities, some of which have pre-existing devices, and some of which may have been installed in part based on incentive agreements with local governments. In such instances, the effect of the bill is uncertain, and depends largely 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 reenacts sections 193.155(4)(a) and 193.1554(6)(a) of the Florida Statutes.

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

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

None.

B. Amendments:

None.