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Committee on Finance and Tax

ASSESSMENT OF RENEWABLE ENERGY DEVICES AND IMPROVEMENTS THAT INCREASE RESISTANCE TO WIND DAMAGE -- IMPLEMENTATION OF CONSTITUTIONAL AMENDMENT APPROVED IN NOVEMBER 2008

Issue Description

In 2008, Florida voters approved a constitutional amendment that authorizes the Legislature, by general law, to prohibit consideration of changes or improvements to residential real property made for the purpose of improving resistance to wind damage or installation of renewable energy source devices as factors in assessing the property's value for ad valorem taxation purposes. The amendment was permissive and does not require the Legislature to enact legislation to implement its provisions. The amendment also repealed language permitting a renewable energy source property tax exemption that was added to the constitution in 1980. Section 196.175, F.S., contains the exemption that was authorized by the now-repealed amendment.

In the 2009 Legislative session, bills were introduced in the Senate and House of Representatives to implement this amendment. The House of Representatives approved HB 7113 but it was never taken up by the Senate. SB 2454 died in the Committee on Community Affairs.

Background

Renewable Energy Incentives

Property tax incentives for renewable energy in Florida date back almost 30 years. In 1980, the following language became Section 3(d), Article VII, 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, the Legislature authorized a property tax exemption for real property on which a renewable energy source device is installed and is being operated. However, the statute authorizing the exemption expired after 10 years. 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 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 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. Unlike the previous statute the value of the exemption was not limited to eight percent of assessed value; it was limited to the amount of the original cost of the device, including the installation cost, but excluding the cost of replacing previously existing property.

The present status of this legislation is ambiguous. The constitutional provision on which it was based has been repealed, but the language is still in Florida Statutes.¹ This legislation differs from the the recently-approved constitutional provision in that it provides an exemption for renewable energy devices instead of prohibiting their consideration in assessed value, and it is not limited to property used for residential purposes.

Wind Resistance Incentives

Attempts to provide property tax incentives for improving structures' ability to withstand hurricanes began in 1999, with the introduction of SJR 124, which would have authorized the Legislature to exempt, by general law, the value attributable to improvements made for purposes of disaster preparedness, and SB 122, which provided a statutory exemption for any increase in value which is attributable to the installation of shutters designed to protect the property against damage from hurricanes. Similar legislation was introduced in 2000 (SJR 138, HJR 1731), and 2007 (SB 158).

November 2008 Constitutional Amendment 3

In the November, 2008 General Election, the voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission. The amendment added the following language to Article VII, Section 4:

(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 amendment also repealed then-existing 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 device is installed and operated, and provided that "(t)he amendment to Section 4 of Article VII authorizing the legislature to prohibit an increase in the assessed value of real property used for residential purposes as a result of improving the property's resistance to wind damage or installing a renewable energy source device shall take effect January 1, 2009."

Implementing Language Proposed by the Taxation and Budget Reform Commission

In addition to the proposed constitutional amendment, the Tax and Budget Reform Commission recommended statutory implementation language for this amendment. The proposed bill created a new section of Florida Statutes that provided that the assessed value of residential property may not be increased solely as the result of the installation and operation of a renewable energy source device or changes, additions, or improvements made for the purpose of improving the property's resistance to wind damage, and it provided a list of such improvements. The bill specified that it did not apply to new construction or structures that are retrofitted within one year after the issuance of a certificate of occupancy, and that after a change in ownership the existence of a renewable energy source device or changes or improvements made for the purpose of improving the property's resistance to wind damage may be considered in determination of assessed value.

¹ Section 196.175, F.S.

Implementing Legislation Proposed in 2009

SB 2454 provided that in 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 changes or improvements made for the purpose of improving a property's resistance to wind damage:

- 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 bill also provided that the installation and operation of a renewable energy source device may not be considered in the determination of the assessed value of real property used for residential purposes. "Renewable energy source" was defined to mean 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.

The bill repealed the existing definition of renewable energy source device in Section 196.012(14), F.S., and repealed obsolete language that was based on the constitutional provision that was repealed by passage of the 2008 constitutional amendment. Several cross-references were amended, and the act was to take effect July 1, 2009.

HB 7113 was identical except that it specified that it would apply to assessments beginning January 1, 2010.

Findings and/or Conclusions

This section provides information about property tax incentives provided by other states for installing renewable energy equipment or improving disaster resistance. It also analyses proposed statutory implementation of the constitutional amendment.

Incentives Provided by Other States²

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 woodheating 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.
- 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 firesprinkler 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

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

- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.

What Types of Improvements should be covered by the Amendment?

The Alternative proposals to implement the constitutional amendment (the statutory language proposed by the TBRC and SB 2454 and HB 7113) generally agreed on what kinds of improvements should be covered by the amendment. They had identical lists of items that were considered “changes or improvements made for the purpose of improving a property’s resistance to wind damage.” The TBRC proposal did not specify what would qualify as a renewable energy source device; SB 2454 and HB 7113 provided a list of items that qualify.

Should the Amendment Apply to New Construction?

The TBRC proposal and SB 2454 and HB 7113 differed, however, on whether the amendment applies to new construction. The TBRC statutory proposal provided:

This section does not apply to new construction or structures that are retrofitted within one year after the issuance of a certificate of occupancy.

After a change in ownership, the existence of a renewable energy source device or changes or improvements made for the purpose of improving a property’s resistance to wind damage may be considered in the determination of assessed value.

The TBRC staff analysis of the proposed amendment stated that the amendment appears to apply to residential properties that are retrofitted with improvements, rather than new construction.

SB 2454 and HB 7113 provide:

This section applies to new and existing construction used for residential purposes.

There are advantages and disadvantages to each of these positions. Advantages to the TBRC position include:

- It reflects the opinion of the TBRC staff analysis and was available to voters considering the amendment, which may have created an expectation as to how the amendment would be implemented;
- It reflects the historic justification given for similar proposals relating to hurricane protection, namely, to prevent property appraisers from increasing assessments when property owners installed hurricane shutters;
- Its practical application is straightforward because it applies to changes to existing properties, and it is easy for the property appraiser to identify the changes and note that the property’s assessment has not been changed;
- The tax benefit is an incentive to a property owner to improve wind resistance or install a renewable energy device, but does not apply to subsequent owners of the property.

Advantages to the SB 2454 and HB 7113 position on this issue include:

- It could provide an incentive to homebuilders to include improved wind resistance and renewable energy source devices in new homes if potential buyers demand these features because they will not increase the homes’ tax burden;
- To the extent that it provides an incentive for homebuilders to include wind resistance and renewable energy source devices in new homes it will encourage quicker adoption of these building practices than limiting the benefit to changes to existing residential property;
- It provides an ongoing tax benefit to residential property with improved wind resistance and renewable energy sources.

How Should the Value of Improvements be Determined?

The renewable energy source exemption in current law³ (based on the constitutional provision that was repealed by the 2008 amendment) provides specific instructions for determining the value of the exemption, namely:

- (1) Improved real property upon which a renewable energy source device is installed and operated shall be entitled to an exemption in the amount of the original cost of the device, including the installation cost thereof, but excluding the cost of replacing previously existing property removed or improved in the course of such installation.

The amendment approved by the voters in 2008, however, does not appear to allow such an approach to determining how much the assessed value should be reduced. The phrase used in the amendment to Art. XII is “authorizing the legislature to prohibit an increase in the assessed value of real property used for residential purposes as a result of improving the property’s resistance to wind damage or installing a renewable energy source device,” which appears to require the property appraiser to determine the value added to the property by the wind resistance improvement or the renewable energy device. It cannot be assumed that the value added will equal the cost of the improvement or device, and some improvements may not even affect a property’s value for tax purposes. The amendment appears to require the property appraiser to compare the value of a residential structure with these attributes to the value of an otherwise-comparable (perhaps hypothetical) property without them.

Determining the value added by a change or improvement made for the purpose of improving wind resistance or the installation of a renewable energy source device will be easier for changes made to existing property than for new construction with such features included. These improvements, especially for wind resistance, may be integral to a structure but may not be visible from the outside. The property appraiser does not inspect buildings under construction, and is not called on to assess their value until they are substantially complete. Also, if all of the houses built in a new neighborhood are built particularly to withstand wind damage, it will be hard to know what part of the value of each house to attribute to this feature if there are no comparable properties that are not wind resistant. Similarly, if all the houses in a new development include renewable energy source devices it may be difficult to separate the value of these devices from the value of other attributes.

Options and/or Recommendations

The Legislature has at least three options with respect to this constitutional amendment:

- Since the constitutional language is permissive, the Legislature may choose not to implement it this session, with the option of implementing it in the future;
- The Legislature could enact legislation based on the TBRC’s proposed statutory language; limiting the assessment reduction to additions to existing residential property until the property changes ownership;
- The Legislature could enact legislation similar to bills filed in both chambers in 2009, extending the assessment reduction to new and existing residential property.

Under any of these scenarios the Legislature may wish to repeal s. 196.175, F.S., the existing exemption for renewable energy devices, since it is not authorized by the constitution.

³ Section 196.175, F.S.